

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE**

FORTY-SIXTH MEETING

MAY 9-10, 2012

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chairman;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
 - A. The identity or cultural affiliation of cultural items, or
 - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (2006).

Six Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates NPS administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.nps.gov/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the *Federal Register* on November 8, 2011 (76 FR-69282-69283).

The 46th Meeting of the Review Committee

The 46th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl, Chair, at 8:40 a.m., Wednesday, May 9, 2012. Ms. Hutt confirmed the attendance of the Review Committee members. Mr. Joseph Joaquin, Tohono O'odham Nation of Arizona, offered a prayer to open the meeting on Wednesday, May 9, 2012. Ms. Hutt introduced the National NAGPRA Program staff present at the meeting. Ms. Hutt recognized Mr. Armand Minthorn, present at the meeting, for his past service on the Review

Committee and as Review Committee Chair. Mr. Minthorn, Confederated Tribes of the Umatilla Reservation, Oregon, offered an opening prayer on Thursday, May 10, 2012.

Review Committee members present –

Ms. Rosita Worl – Chair
Ms. Sonya Atalay
Mr. Alexander (Alec) Barker
Ms. LindaLee (Cissy) Kuuleilani Farm
Mr. Eric Hemenway
Mr. Adrian John
Mr. Mervin Wright, Jr.

Designated Federal Officer present –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Melanie O'Brien, Notice Coordinator, National NAGPRA Program, National Park Service
Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service
Ms. Alayna Rasile, Contractor, National NAGPRA Program, National Park Service
Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior
Mr. Stephen Simpson, Division of Indian Affairs, Office of the Solicitor, Department of the Interior
Ms. Kathy Hanson, Chief, Learning & Development, National Park Service

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees) –

Ms. Jacqueline Allen, Paiute-Shoshone Tribe of the Fallon Reservation, Fallon, NV
Ms. Bianca Alper, Fine Arts Museums of San Francisco, San Francisco, CA
Ms. Anne Amati, University of Denver, Dept. of Anthropology, Denver, CO
Ms. Bridget Ambler, History Colorado, Denver, CO
Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Ms. Caroline Antone, Ak Chin Indian Community of the Maricopa Indian Reservation, Arizona
Ms. Yolynda Begay, U.S. Dept. of Agriculture, Forest Service, Albuquerque, NM
Ms. Anna Berg, Museum of Northern Arizona, Flagstaff, AZ
Ms. Jan Bernstein, Bernstein & Associates, Denver, CO
Mr. Vann Bighorse, Osage Nation, Oklahoma, Pawhuska, OK
Mr. William Billeck, National Museum of the American Indian, Washington, DC
Ms. Heather Bouchee, Portland Art Museum, Portland, OR
Ms. Rebecca Brave, Osage Nation, Oklahoma, Pawhuska, OK
Ms. Lori Breslauer, Field Museum of Natural History, Chicago, IL
Ms. Barbara Brotherton, Seattle Art Museum, Seattle, WA
Mr. Rex Buck, Jr., Wanapum, Priest Rapids, Priest Rapids, WA
Mr. Peter Bunghart, Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona, Peach Springs, AZ
Mr. Richard Buxbaum, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Mr. Jerry Cordova, Bureau of Land Management, Washington Office, Washington, DC
Ms. Mary Carroll, National Park Service, Park NAGPRA Program, Denver, CO
Mr. Antonio Chavarria, Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM
Mr. Ben Chavarria, Pueblo of Santa Clara, New Mexico, Espanola, NM
Ms. Cynthia Chavez Lamar, School of Advanced Research, Indian Arts Research, Santa Fe, NM
Ms. Maa Linge Chu, NTU, Tempe, AZ
Ms. Julia Clifton, Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM
Ms. Jacqueline M. Cook, Confederated Tribes of the Colville Reservation, Washington, Nespelem, WA
Mr. Jerry Cordova, U.S. Dept. of the Interior, Bureau of Land Management, Washington, DC
Ms. Deana Dartt-Newton, Portland Art Museum, Portland, OR
Mr. Clayton Dumont, San Francisco State University, San Francisco, CA
Ms. Dody Fugate, Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM

Mr. David Gadsby, U.S. Dept. of the Interior, National Park Service, Washington, DC
 Ms. Morning Star Gali, Pit River Tribe, California, Burney, CA
 Ms. Angela Garcia-Lewis, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
 Ms. Sheila Goff, History Colorado, Denver, CO
 Ms. Pathimi Goodtracks, Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado, Ignacio, CO
 Ms. D. Rae Gould, University of Massachusetts, Amherst, MA
 Ms. Martha Graham, SRI Foundation, Albuquerque, NM
 Mr. Marcus Guerrero, United Auburn Indian Community of the Auburn Rancheria of California, Auburn, CA
 Ms. Lynn Hartman, Ute Mountain Ute Tribe of the Ute Mountain Reservation, Towaoc, CO
 Vice-Chairman Bradley Hight, Ute Mountain Ute Tribe of the Ute Mountain Reservation, Towaoc, CO
 Mr. Ernest House, Jr., Colorado Commission of Indian Affairs, Denver, CO
 Mr. Chris Howell, Kansas Native American Affairs, Topeka, KS
 Mr. Jordan Jacobs, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
 Mr. Bennett Jackson, Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona, Peach Springs, AZ
 Ms. Christine A. Jerla, WestLand Resources, Inc., Tucson, AZ
 Mr. Joseph Joaquin, Tohono O'odham Nation of Arizona, Sells, AZ
 Mr. Craig Johnson, Susanville Indian Rancheria, Susanville, CA
 Ms. Melany L. Johnson, Susanville Indian Rancheria, California, Susanville, CA
 Ms. Rachel Johnson, Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM
 Mr. Terry Knight, Ute Mountain Ute Tribe, Towaoc, CO
 Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC
 Mr. Leigh Kuwanwisiwma, Hopi Tribe of Arizona, Kykotsmobi, AZ
 Ms. Christine Landrum, U.S. Dept. of Interior, National Park Service, Intermountain Region, Denver, CO
 Mr. Jason Lautenbacher, U.S. Dept. of Interior, National Park Service, Washington, DC
 Mr. Richard Leonard, Salt River Pima-Maricopa Indian Community of Arizona, Scottsdale, AZ
 Mr. Jerrod K. Lewis, Gila River Indian Community, Coolidge, AZ
 Mr. Jon Lohse, Texas State University, Dept. of Anthropology, San Marco, TX
 Mr. Byron Loosle, U.S. Department of Interior, Bureau of Land Management, Salt Lake City, UT
 Ms. Faustina Lopez, Greenville Rancheria of Maidu Indians of California, Greenville, CA
 Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology, Cambridge, MA
 Ms. Angela Martin, Greenville Rancheria of Maidu Indians of California, Red Bluff, CA
 Ms. Melodi McAdams, United Auburn Indian Community of the Auburn Rancheria of California, Auburn, CA
 Mr. Dan Meza, U.S. Dept. of Agriculture, Forest Service, Southwestern Region, Albuquerque, NM
 Ms. Jess Milhausen, University of Washington, Burke Museum, Seattle, WA
 Mr. Armand Minthorn, Confederated Tribes of the Umatilla Reservation, Pendleton, OR
 Mr. Bryan Montoya Pueblo de San Ildefonso, Santa Fe, NM
 Ms. Anne Marie Moore, Albuquerque, NM
 Chairman Alvin Moyle, Paiute-Shoshone Tribe of the Fallon Reservation, Fallon, NV
 Mr. Stephen Mullen-Moses, Snoqualmie Indian Tribe, Snoqualmie, WA
 Mr. David Munsell, U.S. Department of Interior, Bureau of Land Management, Durango, CO
 Ms. Nell Murphy, American Museum of Natural History, New York, NY
 Ms. Jennifer Murray, National Museum of the American Indian, Washington, DC
 Mr. Alden Naranjo, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, Ignacio, CO
 Ms. Angela Neller, Wanapum Heritage Center, Beverly, WA
 Ms. Megon Noble, Univ. of Washington, Burke Museum, Seattle, WA
 Ms. Lara Noldner, Maxwell Museum of Anthropology, Univ. of New Mexico, Albuquerque, NM
 Mr. John Norder, Society for American Archaeology, East Lansing, MI
 Mr. Adam Osbekoff, Snoqualmie Indian Tribe, Snoqualmie, WA
 Ms. Emily Palus, U.S. Department of Interior, Bureau of Land Management, Washington, DC
 Ms. Anne Pardo, U.S. Dept. of Interior, Bureau of Indian Affairs, Reston, VA
 Ms. Theresa Pasqual, Pueblo of Acoma, New Mexico, Acoma, NM
 Ms. Emily Pierce, Peabody Museum of Archaeology and Ethnology, Cambridge, MA
 Mr. Peter Pilles, U.S. Dept. of Agriculture, Forest Service, Coconino National Forest, Flagstaff, AZ
 Ms. Melissa Powell, National Museum of Natural History, Washington, DC
 Mr. Corey Ragsdale, Maxwell Museum of Anthropology, Univ. of New Mexico, Albuquerque, NM
 Mr. Danny Rey, United Auburn Indian Community of the Auburn Rancheria of California, Auburn, CA

Ms. Jennifer Richman, U.S. Dept. of Defense, Army, Corps of Engineers, Portland, OR
Ms. Crystal Rios, Greenville Rancheria of Maidu Indians of California, Greenville, CA
Ms. Helen Robbins, Field Museum, Chicago, IL
Mr. Dave Ruppert, Washington, DC
Ms. Darsita Ryan, Arizona State University, Tempe, AZ
Ms. Mari Lyn Salvador, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Mr. David Siegel, U.S. Dept. of Interior, Fish and Wildlife Service, Albuquerque, NM
Ms. Arleyn Simon, Arizona State University, Tempe, AZ
Mr. Allen Slickpoo, Jr., Nez Perce Tribe, Lapwai, ID
Mr. Chuck Smythe, U.S. Dept. of the Interior, National Park Service, Boston, MA
Ms. Hilary Soderland, Seattle, WA
Ms. Kimberly Spurr, Museum of Northern Arizona, Flagstaff, AZ
Ms. Ann Stodder, Maxwell Museum of Anthropology, Univ. of New Mexico, Albuquerque, NM
Ms. Sonia Tamez, Oakland, CA
Ms. Gwendolyn Thomas, Gila River Indian Community of the Gila River Indian Reservation, Arizona, Sacaton, AZ
Mr. Joseph Tillman, Osage Nation, Oklahoma, Pawhuska, OK
Ms. Shelby Tisdale, Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM
Mr. Joe Tuomey, U.S. Dept. of Interior, Bureau of Reclamation, Durango, CO
Ms. Brittany Wheeler, Field Museum of Natural History, Chicago, IL
Mr. Brandon Williams, School for Advanced Research, Santa Fe, NM
Ms. Julie Woods, Univ. of Massachusetts, Amherst, Amherst, MA
Mr. Frank Wozniak, U.S. Dept. of Agriculture, Forest Service, Albuquerque, NM
Ms. Karen Wurzburger, U.S. Dept. of Interior, National Park Service, Intermountain Region, Denver, CO
Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA
Mr. Gilbert Zepeda, U.S. Dept. of Agriculture, Forest Service, Albuquerque, NM

Adoption of Agenda – May 9, 2012

Review Committee Motion

Mr. Barker made a motion that the Review Committee adopt the agenda. Mr. Wright, Jr., seconded the motion. The motion was passed by unanimous vote.

Comments by Designated Federal Officer

Ms. Hutt stated that for this meeting she was serving both as Designed Federal Officer (DFO) for the committee, as well as National NAGPRA Program Manager. Ms. Hutt stated that she has assumed the role of DFO due to Mr. Tarler's assignment to redraft the NAGPRA regulations at 43 C.F.R. Part 10. Ms. Hutt expressed appreciation for Mr. Tarler's service as DFO. Ms. Hutt introduced National NAGPRA Program staff present at the meeting, including Ms. Melanie O'Brien, Notice Coordinator, who joined the National NAGPRA Program team in January 2012. Ms. Hutt stated that although Ms. Jaime Lavallee left the National NAGPRA Program in late 2011 to pursue her doctorate degree, notice publication continued uninterrupted through the efforts of Ms. Rasile and Ms. O'Brien.

Ms. Hutt thanked Ms. Kathy Hansen, Chief, Learning & Development, National Park Service, for the training she provided to the Review Committee members prior to the meeting. Ms. Hutt expressed her appreciation to Ms. Christine Landrum and the staff at the National Park Service Intermountain Region Office, who hosted the Review Committee at a reception, as well as the participants in the National NAGPRA Basics Training course offered on May 8, 2012: Ms. Megon Noble, University of Washington, Burke Museum; Ms. Christine Landrum, National Park Service, Park NAGPRA; and Ms. Theresa Pasqual, Pueblo of Acoma, New Mexico. Ms. Hutt reported that almost 90 individuals attended the NAGPRA Basics Training and over 70 had signed into the Review Committee meeting by the start of the meeting. Ms. Hutt stated that this level of attendance was a direct reflection of the excellent choice of location by the Review Committee.

Ms. Hutt stated that Review Committee operates under a Charter, which is renewed every two years and will be in

effect until November 24, 2012. The National NAGPRA Program will work to renew the Charter prior to the next Review Committee meeting, scheduled for November 28-29, 2012.

On behalf of the Review Committee, Ms. Worl acknowledged the efforts of Mr. Tarler and Ms. Lavallee, and welcomed Ms. O'Brien to the National NAGPRA Program.

Report: National NAGPRA Program Report on the Implementation of NAGPRA in Mid-Year FY 2012

Web News and Data Management

Ms. Hutt stated that the National NAGPRA Program now has a YouTube channel, through which the eight training videos are available to view on demand. Ms. Mariah Soriano, Database and Website Coordinator, is responsible for this accomplishment, as well as the creation and upkeep of the seven National NAGPRA Program databases. Ms. Soriano supervised the work of Ms. Rasile to digitize and audit the summary documents. This project is complete, and similar work has begun on the inventories. At some point, this digitized information may be available online to increase accessibility; however, consultation may be appropriate before completing this task.

In addition, a large project is underway in the National NAGPRA Program office to archive documents at the National Archive and Records Administration (NARA), which will be reported on in more detail later in the meeting.

Grants

Ms. Hutt stated that the Grants Panel would soon meet to prioritize the applications for competitive grants for 2012, and she will provide an update with final grants numbers to the Review Committee at the November 2012 meeting. Also in May 2012, a grants training will occur in Santa Fe, NM, through the National Preservation Institute.

Regulations

Ms. Hutt stated that Mr. Tarler was currently working on the regulations, and a further update would be provided later in the meeting.

Civil Penalties

Ms. Hutt stated that the National NAGPRA Program recently contracted with Ms. Shannon Keller O'Loughlin as a civil penalties analyst in order to organize and address past civil penalty allegations. Mr. Tarler, Civil Penalty Coordinator, receives civil penalty complaints and supervises Ms. O'Loughlin.

Training

Ms. Hutt stated that the National NAGPRA Program has trained almost a thousand people by the midpoint of 2012, through onsite trainings and webinars.

Notices

Ms. O'Brien stated that for FY 2012 to date, the National NAGPRA Program had published 113 notices and was on target to publish 200 for the year. The total published in FY 2011 was 109. Ms. O'Brien stated the increase can be attributed to the increase in notices submitted by museums and Federal agencies, which was up over 50 percent from the same time last year. The number of notices published pursuant to the culturally unidentifiable rule was 29 by mid FY 2012, compared to 27 published under the rule in total for FY 2011.

Review Committee Questions and Discussion

Mr. Wright, Jr., asked if the Notices report contains information on collections that are not being repatriated. Ms. Hutt stated that inventory information, representing Native American individuals and associated funerary objects, is available on the National NAGPRA Program website databases, and includes information regarding *Federal Register* publication and repatriation, when reported. Summary information is also available in online databases; however, institutions are only required to report the existence and affiliation of collections, not their extent or nature. Some institutions do provide that additional information, which is then included on the database. Ms. Hutt stated she would work to try to capture additional information to show the progress of repatriation in the final report for 2012.

Ms. Atalay asked how many civil penalties cases the Review Committee could expect to be investigated this year and for a description of the National NAGPRA Program's plans regarding the lack of a civil penalty investigator. Ms. Hutt stated that she is working to obtain funds for a civil penalty investigator. In the past, Mr. Bob Palmer was available as a civil penalty investigator through the Law Enforcement Division of the National Park Service. Mr. Palmer was able to complete investigations, but his time was limited as far as administrative document control. This task is now being completed by Ms. O'Loughlin, under the supervision of Mr. David Tarler. However, until a civil penalty investigator is hired, no investigations will be conducted. Ms. Mattix stated that under the hiring statutes and laws of the Federal Government, the position of investigator must be filled by an employee and not a contractor. As Ms. O'Loughlin was hired as a contractor, she fills the role of civil penalty analyst.

Ms. Atalay asked for an update on publication of notices regarding the disputes heard at the November 2010 meeting. Ms. Hutt stated that notices are published pursuant to policy of the Review Committee. For the disputes heard at the November 2010 meeting, the National NAGPRA Program referred the matter to the Departmental Ethics Office due to concerns raised during the meeting. No museum or individual lodged an ethics complaint. Ms. Hutt stated she received guidance from the Department regarding the issue immediately prior to the meeting, which she will review and discuss with the Assistant Secretary in order to make a determination on publication of the Review Committee findings. Ms. Hutt stated, as clarification, that Review Committee decisions are final when voted on and are recommendations to the parties. The parties are then free to act, or not act, upon the recommendations as they choose. Publication in the *Federal Register* documents the decision, but is not required for purposes of action on the part of the parties. Ms. Hutt stated that the National NAGPRA Program received information from the Alaska State Museum, that their issue with the Sealaska Corporation and Wrangell Cooperative Association was concluded by private agreement.

Ms. Hutt stated that an investigation by the Departmental Ethics Office related to gifts received by the Review Committee concluded that there was no wrongdoing on the part of the Review Committee members; the gifts were minor and promptly returned.

Ms. Atalay asked for clarification of the issue of duplicate reporting of collections by Federal agencies and their repositories. Ms. Atalay stated the Review Committee has heard from Indian tribes and Federal agencies that it can be difficult to put collections in notices, and one barrier is the lack of communication between Federal agencies and the repositories that hold their collections. Ms. Hutt stated that the duplication exists between accounting for Native American human remains that have been moved from culturally unidentifiable to affiliated, not that individuals are counted more than once. The total number of Native American human remains in Federal agency and museum collections is almost 176,000; approximately one-fourth of those have been resolved in a notice.

Ms. Hutt stated that the law requires that institutions with possession or control of collections create an inventory. Federal agencies are in the position of continually checking to see if museums have, or might have, Federal agency collections. Several Federal agency representatives are scheduled to address the Review Committee, and may have additional information on these barriers and ways in which the Review Committee might be able to help.

Regarding the Native American Consultation Database (NACD), Ms. Atalay stated she has heard, particularly from museums and Federal agencies, that oftentimes the data contained in both the NACD and the Tribal Leaders Directory is out-of-date, and asked what the National NAGPRA Program might do to address the problem. Ms. Hutt stated that the National NAGPRA Program has to follow a very formal process of direct notification by Indian tribes regarding positions and contact information. Updates are immediately entered into the NACD upon receipt by the National NAGPRA Program. Although current information may be available through other means, the National NAGPRA Program is not able to incorporate that information into the NACD without formal tribal notification. Ms. Hutt stated that National NAGPRA Program could periodically request that tribes review and update their information.

Mr. Wright, Jr., stated one problem faced by many tribes is the contradictory nature of the term "culturally unidentifiable." It should be "Native American" or "not Native American." If it is Native American, then it cannot be culturally unidentifiable. Mr. Wright, Jr., stated that the National NAGPRA Program should take a position on this one way or the other. Ms. Hutt stated she appreciated the comment. While the National NAGPRA Program uses the shorthand CUI and CA, the statutory term is "culturally affiliated Native American human remains" or "culturally unidentifiable Native American human remains." Ms. Hutt acknowledged the difficulty of this issue, and

stated that the National NAGPRA Program has tried to address this difficulty by offering specialized trainings on the process to make cultural affiliation determinations. Ms. Worl stated that this issue might be one the Review Committee could include in its report to Congress.

Ms. Worl asked for further clarification of the difference between a civil penalty investigator and analyst. Ms. Hutt stated that the analyst reviews the civil penalty allegation files to try to manage and resolve issues in-house. The investigator goes to the museums, talks to museum staff, and looks at the collection and records in order to resolve allegations. Ms. Hutt stated she is considering every avenue in order to obtain a civil penalty investigator.

Ms. Worl asked for clarification of the dates of the current Review Committee Charter, and stated she would like to address a concern that the Charter had expired and was not in effect during the November 17-18, 2010, meeting. Ms. Hutt stated that Charters are in effect when signed by the Secretary. The current Review Committee Charter was signed on November 14, 2010, and was in effect during the November 17-18, 2010, meeting. Ms. Hutt stated that the Charter was not published until November 24, 2010, which may have been a source of confusion.

Mr. Wright, Jr., stated that perhaps the Review Committee should address the fact that there is no requirement under the law for museums to notify Federal agencies when museums have control of collections taken from Federal lands. Mr. Wright, Jr., stated this has caused problems experienced by tribes in Nevada, as well as elsewhere, and that museums should be legally obligated to report these collections to the Federal agencies.

Presentation: Colorado Lands Reinterment and Repatriation Workgroup

Presentation

Vice-Chairman Bradley Hight, Ute Mountain Ute Tribe, stated that the tribe believes the ancestors need to be reburied to continue their journey to the Creator and has worked for many years to ensure the reburials occur. The tribe strongly supports the Colorado Lands Reinterment and Repatriation Workgroup.

Ms. Pathimi Goodtracks, Southern Ute Tribal Council Member, stated she was present to express the support and commitment of the Southern Ute Tribe to its strong working relationships with its many partnerships developed regarding NAGPRA. Tribes have had to adapt to address the need for reburial in a culture that did not recognize such a thing. The Colorado tribes have been successful and are now known as national leaders in repatriation. Ms. Goodtracks stated that the tribe wanted to express a barrier to NAGPRA implementation and ask the Review Committee for its support that tribes be allowed to utilize state and Federal lands more broadly to provide for reinterment.

Mr. Ernest House, Jr., Executive Secretary for the Colorado Commission of Indian Affairs, member of the Ute Mountain Ute Tribe, stated he represented Colorado Lieutenant Governor Joseph Garcia, who sent his regrets. Mr. House, Jr., stated that the Colorado Commission of Indian Affairs was enacted by Colorado legislation in 1976 as the official state liaison between the Southern Ute Tribe, the Ute Mountain Ute Tribe, and the State of Colorado. The Colorado Commission of Indian Affairs works with the two tribes in many areas of state government and continues to maintain a close government-to-government relationship. The Colorado Lands Reinterment and Repatriation Workgroup was formed in 2011 at the request of both tribes to identify potential lands within Colorado for reburial of Native American human remains from museum and Federal agency collections. Mr. House, Jr., stated that in 2006, representatives of the Colorado Commission of Indian Affairs, the Colorado Historical Society (now History Colorado) and Indian tribes appeared before the Review Committee to request support of a tribally driven process for reinterment of culturally unidentifiable Native American human remains and associated funerary objects found through inadvertent discoveries on Colorado state and private lands. The Review Committee provided helpful insight and direction, which has resulted in precedent-setting state protocol.

Mr. House, Jr., stated they were once again before the Review Committee to seek support for a tribally driven approach to address the issue of collections that have no known site origin information and no straightforward reburial location options. Most Federal agencies either require a policy waiver to rebury remains or have no reburial policy in place. Many tribes prefer state and Federal lands for reinterment to better preserve and protect reburial sites, which hold site confidentiality in perpetuity. Contemporary tribal reservation lands do not necessarily reflect aboriginal occupation and, as such, are not the preferred burial location option for many repatriating tribes. In

addition, many tribes do not have personnel available to provide long-term site monitoring. A limited number of potential reinterment locations, on both state and Federal lands, is needed to reinter human remains as close as possible to their original removal location or current repository location.

Mr. House, Jr., stated that, at present, over 660 individuals originating from the state of Colorado have been reported on the National NAGPRA Program CUI database, and it is likely tribes will request and desire that they be reinterred in Colorado. Mr. House, Jr., stated that the parties were present to request the Review Committee's support and recommendation to Congress and the Secretary of the Interior that all Federal agencies with jurisdiction over lands within the state of Colorado identify specific locations where they will be willing and able to exercise discretion and flexibility in their management policies to allow for reburial of Native American human remains repatriated under NAGPRA. The same request is being made to the state of Colorado. On behalf of all of the parties, Mr. House, Jr., expressed appreciation for the Review Committee's consideration of this issue.

Mr. Terry Knight, Ute Mountain Ute Tribe, stated he was responsible for the physical reburial and ceremonies associated with repatriations. Mr. Knight described some of the cultural and spiritual challenges associated with the repatriation and stated he was grateful that the process in Colorado has evolved through the efforts of all involved developing the agreements. Mr. Knight stated that in his culture, older men are the only individuals allowed to participate in these decisions and process. Mr. Knight stated he hoped the Great Spirit would assist the Review Committee in their work, and he expressed appreciation for the opportunity to comment.

Review Committee Questions and Discussion

Ms. Worl thanked the tribes for reporting on the positive relationships they have developed with different Federal agencies. Ms. Worl stated that the Review Committee has heard testimony from tribes across the country that desire to rebury their ancestors on state and Federal lands, and the Review Committee has included related recommendations in past reports to Congress.

Mr. Hemenway thanked the parties for their presentation, and stated that his tribe, the Little Bay Bands of Odawa Indians, has experienced many of the same concerns. Mr. Hemenway stated that the repatriation process is two-fold; first, completing the legal process for return of control, and then second, completing the reburial process, including conducting ceremonies and finding a location. Mr. Hemenway described some of the challenges he has encountered in identifying burial locations. Mr. Knight stated that another hurdle is that some Federal agencies will allow reburial on Federal lands if the original location was identified as agency land but were unwilling to allow reburials when the original site location was unknown.

Mr. Barker thanked the parties for their presentation and commended the collaboration between the parties. Mr. Barker asked for clarification of the request. Mr. House, Jr., stated that the parties are looking for a solution that would be systematic across all Federal agencies to work with tribes, museums, and state agencies. Mr. Knight stated that one concern voiced regularly by Federal agencies is the agencies' ability to protect the burial sites without liability. This is also of great concern to tribes, and would need to be addressed in the policy.

Mr. Wright, Jr., stated that tribes in Nevada face an ongoing problem of differences in scientific theory compared to tribal origins. The Federal agencies in Nevada have stated that Paiute people have only been in the Great Basin for 500 years, when in fact Paiute tribal traditions, history and language support their presence in the Great Basin back to the beginning of time. Mr. Wright, Jr., stated that the trust responsibility of Federal agencies failed years ago when these collections were unearthed; the trust responsibility needs to be acknowledged and applied to tribes throughout this process. Mr. Wright, Jr., stated that liability and protection of burial sites would need to be addressed in any inclusive policy developed by the DOI, with input by the Review Committee and others. Regarding culturally unidentifiable Native American human remains, Mr. Wright, Jr., stated that tribes are responsible to care for and reinter these collections, even though tribes should not be in that type of position. Currently, tribes hold the entire burden of proof when dealing with these collections. Federal and museum officials need to work on mutual respect, and the playing field needs to be more level with equal responsibility shared by all.

Review Committee Motion

Ms. Atalay made a motion that the Review Committee establish a subcommittee to consider drafting a required policy to allow reburial on Federal lands and state lands. Ms. Farm seconded the motion. The motion was passed by unanimous vote.

Ms. Worl asked Mr. Hemenway to chair the reburial subcommittee, working with Mr. Barker and Mr. Wright, Jr. Mr. John stated that although the Haudenosaunee Standing Committee has been working on repatriation for many years, a lot of the Elders are now gone and the work has passed on to the younger men, like Mr. John. Mr. John stated that he has participated in the reburial of hundreds of human remains in the last few years. One complication is the lack of Federal lands and so the tribe has designated tribal lands for reburial. Mr. John stated that they have assisted other tribes with reburials. Mr. John stated that the reburial subcommittee can help to ensure that tribes can complete reburials on Federal lands or state lands in a proper, respectful manner.

Presentation: NPS Intermountain Region, Office of Indian Affairs & American Culture

Presentation

Ms. Christine Landrum, Director, NPS Intermountain Region, Office of Indian Affairs and American Culture, stated that the Intermountain Region (IMR) includes over 90 Park Service units within the eight-state region of Arizona, Colorado, Montana, New Mexico, Oklahoma, Texas, Utah, and Wyoming. The National Park Service is unique as a Federal agency in that it both complies with NAGPRA and administers NAGPRA. The National NAGPRA Program is charged with administering NAGPRA compliance for all museums and Federal agencies. The Park NAGPRA Program oversees National Park Service compliance with NAGPRA through technical guidance, training, and funding. Each of the seven National Park Service regions has at least one person designated to serve as a regional NAGPRA coordinator, providing compliance assistance to units within their respective regions. The Park NAGPRA Program is housed within the Office of Indian Affairs and American Culture, and helps parks with every step of the NAGPRA process, including: internal NPS funding, training, tribal consultation, evidence evaluation, notice publication, developing plans of actions and comprehensive agreements, project management, repatriations and reinterment. The IMR Park NAGPRA Program works closely with the IMR Museum Services and Archeology Programs to provide comprehensive technical assistance. The IMR Office of Indian Affairs and American Culture reports directly to the IMR Director, a reflection of the importance the region places on government-to-government relationships shared with American Indian tribes.

Ms. Landrum stated that the IMR works in collaboration with its tribal colleagues to achieve common goals under NAGPRA, to repatriate Native American human remains and cultural items as efficiently, transparently, respectfully and thoughtfully as possible, in compliance with the law. Since 1990, the IMR units have published 49 Notices of Inventory Completion covering 3,392 individuals and 8,547 associated funerary objects; of those, only 84 individuals and 1,591 funerary objects are awaiting repatriation by the tribes and for which tribal consultation is ongoing. The majority of the repatriated individuals and funerary objects were reburied in NPS units. IMR units have published 26 Notices of Intent to Repatriate summary items covering 371 unassociated funerary objects (all have been repatriated), 2,521 sacred objects (all but 10 have been repatriated), and 22 objects of cultural patrimony (all have been repatriated). Ms. Landrum recognized Ms. Mary Carroll for her work in tracking Park Service compliance. Ms. Landrum stated that 46 (44 percent) of the 104 NPS units with NAGPRA inventory items are in the IMR; 55 (60 percent) of the IMR units have NAGPRA inventory and/or summary items, and that 400 of the 1,499 culturally unidentifiable Native American human remains in NPS custody are in the IMR.

Ms. Landrum stated that several parks were working on Notices of Inventory Completion for an estimated 457 culturally affiliated human remains including those parks specifically identified in a NPS GAO audit response timeline. These units work closely with the tribes toward those targeted publication dates, and several draft notices are currently under review by the Park NAGPRA Program. The IMR secured internal NPS funding for a two-year project to proactively and systematically address culturally unidentifiable Native American human remains in response to requests from consulting tribes. This project is scheduled for completion in 2013, with notice publication, repatriations, and reburials in the Park Service units as requested by the tribes, for all culturally unidentifiable Native American human remains in the IMR.

Ms. Landrum stated that the IMR is working to address other challenges and opportunities presented in NAGPRA implementation. After identifying needs, the IMR requested approximately 3 million dollars in Park Service NAGPRA project funds for the next five years. The IMR is committed to being proactive about consulting with tribes in order to identify potential summary items. In addition, tribal consultations continue in order to complete the process towards return of cultural items, as well as the creation of multi-agency, multi-tribe comprehensive

agreements to address inadvertent discoveries in Colorado.

Ms. Landrum stated that the Office of Indian Affairs and American Culture partnered with the Regional Museum Services Program and a tribal working group to develop detailed protocol for testing cultural items, subject to NAGPRA, for heavy metal pesticides. The IMR NAGPRA Museum Services Program and the Park NAGPRA Program pooled financial resources to purchase testing equipment, which can also be made available to tribes and other institutions. The NPS requires individual Park Service units to discuss this issue at the beginning of each consultation process. Ms. Landrum stated that the issue of reburial on Federal land has been one of the most significant challenges to full NAGPRA implementation in the IMR. The Mesa Verde decision was made by the Superintendent in close collaboration with the IMR Regional Director and recently retired Director of Indian Affairs and American Culture for the IMR, Ms. Cyd Martin, who also served as the Park NAGPRA Program Manager. As reported at the previous Review Committee meeting, further resolution of this issue would likely require amending NPS agency policy. Ms. Landrum stated that the IMR is committed to collaborating with all of its partners to identify strategies to address this highly sensitive topic. Ms. Landrum stated that the NPS is honored to partner with its many tribal leaders on these important issues and looks forward to future collaborative opportunities.

Review Committee Questions and Discussion

On behalf of the Review Committee, Ms. Worl thanked the NPS Intermountain Region for the reception. Mr. Barker asked for an electronic copy of Ms. Landrum's presentation, which Ms. Landrum agreed to provide. Mr. Wright, Jr., asked how many tribes were included in the IMR. Ms. Landrum stated that she would estimate 175 tribes, including tribes that are located and have reservation lands within the IMR and tribes with past ties to the area. Mr. Wright, Jr., asked if the IMR region correlates with any BIA regions. Ms. Landrum stated that the regions of the NPS do not necessarily coincide with the organizational boundaries for other Federal agencies, including the BIA.

Presentation: USDA Forest Service, NAGPRA Office

Presentation

Mr. Gilbert Zepeda, Deputy Regional Forester for the Southwestern Region, USDA Forest Service, stated that the Forest Service is charged with the stewardship of 193 million acres of national forest and grasslands, divided into nine geographic regions. Mr. Zepeda stated the Southwestern Region encompasses over 20 million acres on 11 national forests and three national grasslands. As Deputy Regional Forester, Mr. Zepeda is part of a three-person executive leadership team that oversees all activities and management of the Southwestern Region. Within the Forest Service, the Southwestern Region has the largest number of human remains and funerary objects to repatriate to tribes under NAGPRA. For this reason, the responsibility for NAGPRA compliance is reserved for the Regional Forester in the Southwestern Region, and the National NAGPRA Coordinator for the USDA Forest Service is housed in the Southwestern Region office. For the other eight units, NAGPRA responsibility has been delegated to the forest supervisors.

Mr. Zepeda stated that the Southwestern Region has been working on a single repatriation project with the Hopi Tribe of Arizona, which constitutes 60 percent of the agency's workload and, when completed, will account for the repatriation of at least 75 percent of the agency's inventoried human remains. Mr. Zepeda thanked the Hopi Tribe of Arizona for their assistance. The Forest Service received legislative authority to rebury those human remains on Forest Service lands under the 2008 Farm Bill and to assist in funding reburial. The Southwestern Region policy was established in 1994 and provided much of the basis for the Forest Service agency-wide guidance on reburial. The Southwestern Region is committed to both the spirit and legal intent of NAGPRA, and has attempted to demonstrate this through budgetary allocation, progress, willingness and desire to move this work forward to fruition.

Mr. Frank Wozniak, National NAGPRA Coordinator for the USDA Forest Service, and NAGPRA Coordinator for the Southwestern Region, stated he would be providing an update on NAGPRA implementation in the Southwestern Region. By the end of FY 2011, the Forest Service had repatriated 1,096 Native American human remains, 75 percent of which were from the Southwestern Region. In addition, the Forest Service repatriated 17,430 associated funerary objects and 5,307 unassociated funerary objects. Mr. Wozniak stated that the Forest Service anticipates repatriation of several hundred additional Native American human remains by the end of FY 2012. From FY 2010 through FY 2012, the Forest Service obligated a total of over 1.3 million dollars toward NAGPRA implementation.

Mr. Wozniak stated that the Forest Service is in the third year of a five-year project for repatriation of all Native American human remains and funerary objects from the Coconino National Forest in its collection to the Hopi Tribe of Arizona, which will culminate in FY 2014 with the repatriation and reburial of approximately 1,500 sets of human remains from a single site in North Central Arizona.

Mr. Dan Meza, Regional Tribal Relations Program Manager, USDA Forest Service, thanked the Review Committee for the opportunity to demonstrate the Forest Service's commitment toward this important work. Mr. Meza stated that he offers policy advice and guidance to Forest Service staff working with tribes who have interest in the management of National Forest system lands in the Southwestern Region. Mr. Meza stated that funding resources to implement this work were sorely lacking and described the efforts of the Forest Service to secure funds for consultation, NEPA analysis, equipment costs, and tribal cultural consultants. Mr. Meza stated that he believes the National Forest Service Office understands that this is an ongoing, important program.

Mr. Craig Johnson, Tribal Relations Specialist, Coconino National Forest, stated he has been in this position for two years and his first assignment was the completion of the repatriation of Native American human remains. Mr. Johnson described the logistics of the repatriation. The Forest Service housed the collection in the office building, and as a result had a medicine man perform a ceremony for employees and to cleanse the building. In addition, they have worked to develop a process to pay tribal specialists to help offset expenses. Mr. Johnson described the process of finding burial locations on Federal land that would allow for future protection.

Mr. Leigh Kuwanwisiwma, Director, Cultural Preservation Office, Hopi Tribe of Arizona, stated the Hopi Tribe has been working on this repatriation for many years. When completed in 2014, this repatriation will include the return of approximately 3,000 human remains and 5,000 funerary objects. Mr. Kuwanwisiwma stated that the Hopi Tribe was concerned about whether the reburials will be protected, and was assured that the Forest Service will make every effort to monitor and protect these reburial sites.

Review Committee Questions and Discussion

Ms. Worl stated that the reburial subcommittee, established to consider the issue of reburial on Federal lands, would very much appreciate receiving a copy of the Forest Service's written procedures and policies. Ms. Atalay thanked the parties for their presentation and congratulated them on their accomplishments. Ms. Atalay asked if the Forest Service representatives could explain any barriers or challenges encountered in NAGPRA implementation. Mr. Wozniak stated that he would speak specifically with regard to the Southwestern Region. Due to its large collection size, the Southwestern Region retained its NAGPRA reporting responsibilities at the regional level, and hired Mr. Wozniak, in 1992, as NAGPRA Coordinator for the Southwestern Region. The Southwestern Region then systematically approached any institution that might have had collections and worked to develop summaries and inventories of all Forest Service collections by the end of 1995. Through the years, new collections have been identified and reported. The other Forest Service regions had significantly smaller numbers of collections to identify. The total number of human remains in the Forest Service's collections was found to be approximately 5,300. Mr. Wozniak explained that of the approximately 120 reporting units in the Forest Service, half of the forests report no archeological collections. Mr. Wozniak stated that 98 to 99 percent of collections from Forest Service lands were collected by outside entities, such as universities and museums, for research purposes.

Mr. Wright, Jr., thanked the parties for their preservation efforts and their success on completing this work. Mr. Wright, Jr., stated that the Forest Service's level of commitment for funding NAGPRA implementation does not appear to be duplicated in other Federal agencies. Mr. Wright, Jr., asked Ms. Mattix about internal funding policies of Federal agencies, and specifically whether agencies have internal policies that limit NAGPRA implementation work when funds are not available. Ms. Mattix stated that each Federal agency has its own budget policies; however, agencies cannot complete work when funds are not available. Mr. Wright, Jr., stated that lack of resources is an unacceptable reason for not complying with NAGPRA. The agencies were responsible for the collection activities, either directly or indirectly, and are now responsible for NAGPRA implementation.

Presentation: NAGPRA Update, Bureau of Indian Affairs

Presentation

Ms. Anna Pardo, Museum Program Manager and National NAGPRA Coordinator, Bureau of Indian Affairs (BIA),

thanked the Review Committee for the opportunity to speak on NAGPRA implementation. Ms. Pardo stated she provided a written update on the BIA's NAGPRA implementation for the November 2011 meeting. NAGPRA work was first done within the Division of Acquisition and Property Management, and was transferred to the Museum Property Program in the Division of Environmental and Cultural Resources Management (DECRM) in 2004. This reorganization consolidated the museum program with other cultural resource programs, allowing for increased coordination and compliance with cultural resource laws and initiatives. Currently, the museum program falls under the Assistant Secretary of Indian Affairs, in the Office of Facilities, Environmental and Cultural Resources, within the DECRM. Ms. Pardo stated that Mr. Marvin Keller, Federal Preservation Officer, BIA, was hired in January 2010 and is her co-coordinator for NAGPRA work.

Ms. Pardo stated that the BIA asserts control over archeological items, including those subject to NAGPRA, removed from tribal lands under the authority of Antiquities Act permits issued between June 8, 1906, and October 31, 1979. The BIA requested and funded studies to identify archeological collections and NAGPRA items. Between 1994 and 2002, the U.S. Army Corps of Engineers conducted research and surveys, and produced three reports, identifying 61 repositories in 12 states that have BIA collections. The BIA continues to work to identify repositories in 15 additional states. Ms. Pardo stated that nearly all of BIA's archeological collections are housed in non-BIA repositories.

Ms. Pardo stated that from 2003 to 2010, when she was hired, the BIA's National NAGPRA Coordinator position was vacant. However, other BIA staff continued NAGPRA implementation work through tribal consultation, notice publication, and repatriations. Notable for their work are Ms. Emily Palus, Museum Specialist, and Mr. Garry Cantley, Western Regional Archeologist. Ms. Pardo stated that about a month after beginning her new job as National NAGPRA Coordinator in June 2010, the GAO report was released, which asserted, "BIA has done the least amount of work and has low confidence that all of their NAGPRA items have been identified." Ms. Pardo stated that during the time the GAO staff conducted their study, the BIA did not have a NAGPRA Coordinator, museum specialist, or Federal Preservation Officer. Ms. Pardo stated that the records and files existed at that time to document NAGPRA work at repositories, draft and final notices, inventories and other NAGPRA information. The BIA maintained, and continues to maintain, all required NAGPRA information. The only information that was not present, and was not required in the regulations, was information on actual repatriations. Ms. Pardo stated that since the GAO visit, the BIA has contacted all repositories with whom the BIA has published joint notices to determine the repatriation status of the cultural items that appeared in the notices. Ms. Pardo continues to maintain contact with the repositories to track repatriations. This information is reported annually to the National NAGPRA Program.

Ms. Pardo stated that between 2003 and 2010 the BIA published 26 Notices of Inventory Completion and 5 Notices of Intent to Repatriate, accounting for 227 individual sets of human remains, 1,626 associated funerary objects, 3,630 unassociated funerary objects, and 3 sacred objects. This was accomplished by BIA staff with collateral NAGPRA coordination duties. Ms. Pardo stated that the GAO assertion that the BIA has done the least is not an accurate reflection of the situation, either then or now. With respect to the BIA's level of confidence of having located all repositories with BIA collections, Ms. Pardo stated it is likely that other repositories house BIA collections that have not yet been identified. Current initiatives include researching and reviewing Antiquities Act permits at the National Archives, contacting repositories listed on those permits, and determining any transfers of these collections from the original permittees. While this remains a daunting task, the goal at the BIA is the repatriation of all human remains and funerary objects removed from tribal lands and currently housed in repositories. Ms. Pardo stated she has done extensive outreach to repositories to reintroduce the museum program, in order to determine the status of the repositories' collections and NAGPRA compliance. Ms. Pardo stated that the BIA currently has contracts with three non-Federal repositories (the Arizona State Museum, the Nevada State Museum, and the Museum of Indian Arts and Culture), which combined house more than 50 percent of BIA's archeological collections from tribal lands. In addition, the BIA now has a contract with the Northern Arizona University and is making progress on agreements with other repositories.

Ms. Pardo stated that since she began working as the NAGPRA Coordinator, the BIA has published 9 Notices of Inventory Completion and 4 Notices of Intent to Repatriate, accounting for 1,498 individual sets of human remains, 3,547 associated funerary objects, 1,400 unassociated funerary objects, and 1 sacred object. Ms. Pardo stated she provided a copy of the BIA's NAGPRA policy to the Review Committee, which sets out the specific requirements and responsibilities of all BIA staff with respect to items subject to NAGPRA. Ms. Pardo stated that over the past two years she has worked to survey non-Federal repositories to determine the status of NAGPRA collections, and is

currently analyzing the information in order to determine how much work remains, as well as the nature of that work.

Ms. Pardo described several very successful repatriation projects, including work with the Arizona State Museum, which houses more than two million items and associated records from tribal lands, representing the single largest collection over which BIA asserts control. The BIA and Arizona State Museum have published a total of 20 joint notices, accounting for 1,842 individual sets of human remains, 9,489 associated funerary objects, 25,506 unassociated funerary objects, and 4 sacred objects. In May 2012, the 20-year project will culminate with the transfer of 1,148 individual sets of human remains and 2,827 funerary objects to the Hopi Tribe of Arizona, the Zuni Tribe of the Zuni Reservation, and the White Mountain Apache Tribe, and the reburial of 207 individual sets of human remains. The White Mountain Apache Tribe received two repatriation grants, which have been immensely helpful in both past and upcoming reburials. Ms. Pardo stated the BIA would like to commend the staff of the Arizona State Museum for their dedication and accomplishments. In addition, NAGPRA implementation work continues with the Museum of Indian Arts and Culture and the Nevada State Museum.

Ms. Pardo stated that the Review Committee had requested an update on the human remains recovered from Wizard's Beach. Ms. Pardo stated that she has no new information to provide; the human remains are housed in a secure facility, with very limited access, in Reno, NV. Ms. Pardo stated that funding remains a significant barrier to implementation faced by the BIA. The rate at which NAGPRA implementation work proceeds is directly proportional to the amount of funding received. In September 2011, the DOI sent a response to Congress outlining the needs of the bureaus to achieve NAGPRA compliance. BIA estimated its need to be an additional 765,000 dollars annually over the next seven years to complete NAGPRA work. Ms. Pardo stated that most repositories have been cooperative and helpful, and the BIA is very appreciative of the work of the repository staff who face many of the same challenges as Federal agencies.

Ms. Pardo stated that the BIA has a lot more work to do to accomplish its goal of repatriating all human remains and funerary objects over which BIA asserts control, and will continue its work as described above. Ms. Pardo thanked the National NAGPRA Program staff for their warm welcome and guidance. Ms. Pardo stated she would be honored to present another update to the Review Committee at its November 2012 meeting in Washington, DC.

Review Committee Questions and Discussion

Ms. Atalay thanked Ms. Pardo for her presentation, and asked for information on how many human remains and associated funerary objects under BIA control are not listed in either published inventories or the culturally unidentifiable human remains database. Ms. Pardo stated that to her knowledge, all known BIA collections are listed; however, work continues to ensure identification of all BIA collections. Ms. Atalay asked if the BIA has encountered any barriers to NAGPRA implementation in working with repositories. Ms. Pardo stated that the repositories face some of the same constraints as Federal agencies, and repository staff has to adhere to internal policies. The relationships can be very delicate. Communication and building trust and relationships will be key to accomplishing the goal of NAGPRA implementation. Ms. Atalay asked if the majority of the repositories had already completed their inventories when contacted by the BIA. Ms. Pardo stated that, in general, the repositories had completed the work, but in some instances the quality of the inventories may have been questionable due to insufficient consultation or research. Ms. Atalay asked what specific actions the BIA has taken to ensure that repositories have completed their work. Ms. Pardo stated that the BIA can ask for the repositories' cooperation but cannot require work or dictate to non-Federal repositories.

Mr. Hemenway thanked Ms. Pardo for her presentation, and asked for a sense of what the BIA controls in the repositories. Mr. Hemenway stated he wanted to be clear that repositories are not repatriating materials that are under the control of the BIA. Ms. Pardo stated that she surveys repositories annually regarding their collections, with very specific questions about NAGPRA. The repositories provide an update on the extent of their collections and what is under BIA control. Ms. Pardo stated that she has developed her own database and tracks items published in notices and those subsequently been returned to tribes. Currently, approximately 34 sets of human remains have been published but not yet returned to the tribe. Mr. Hemenway stated that his tribe has had issues where neither the repository nor the Federal agency wanted to assert control. Ms. Pardo stated that the BIA asserts control over cultural items that came from tribal lands under Antiquities Act permits, and has published joint notices with repositories. The repositories have possession; the BIA has control.

Mr. Wright, Jr., asked what could be done in cases where cultural affiliation was determined without consultation or

when a museum failed to notify a Federal agency of its collections. Ms. Mattix stated that, ideally, the museum would contact the Federal agency and confirm the agency's collections. However, the Federal agency has the ultimate responsibility for items under its control. Ms. Atalay asked if Ms. Pardo confirms that the repositories are completing consultation as required under NAGPRA. Ms. Pardo stated that she does. Ms. Atalay asked what timeframes have been set for the repositories. Ms. Pardo stated she is working on a very short deadline of two weeks with three repositories, due to a potential funding opportunity through the DOI. Ms. Pardo stated that the BIA is systematically working with the remainder of the repositories to identify collections, beginning with repositories with the largest potential collections. Ms. Atalay asked for clarification of the point in the BIA's report that the extent of the BIA's responsibility is still being determined. Ms. Pardo stated that the BIA had requested an opinion from the Solicitor's Office on whether the BIA owns items excavated from Indian lands under Antiquities Act permits from 1906 to 1979. Mr. Simpson stated that opinion was requested in 1998 and, while it has not yet been issued, it is near the top of the priority list and recent progress has been made. Mr. Wright, Jr., stated that resolution of issues, such as this opinion, were important to help complete NAGPRA work. Ms. Worl stated the Review Committee looks forward to an update from Ms. Pardo at the November 2012 meeting. Ms. Worl asked if the National NAGPRA Program could provide a report on the overall issue of Federal agency collections in repositories, for the Review Committee's consideration at the November 2012 meeting.

Discussion: Review Committee's Position on the Proposed Redefinition of "Native American" for Purposes of NAGPRA

Discussion on May 10, 2012

Mr. Barker stated that the Review Committee received a copy of a letter from the DOI stating the DOI's position on whether to amend the definition of Native American. Mr. Barker stated he was surprised that the DOI established a position on this topic without referring the matter to the Review Committee or seeking its opinion. Mr. Barker stated that in its 2011 report to Congress, the Review Committee did not advocate for this change, but suggested that Congress should take up the matter as it was deeply problematic, with strong feelings on all sides. Ms. Hutt stated that during the NAGPRA hearing hosted by the Senate, Senator Akaka specifically asked a direct question of the witness, which was referred back to DOI. Mr. Barker stated he understood that the Review Committee was to advise the DOI on NAGPRA issues. Mr. Simpson stated that the Review Committee provides advice to the Secretary upon request. Ms. Mattix stated that Congressional inquiries require a fast response. If the Review Committee has additional views on this issue and would like to provide those to the Secretary, the DOI could certainly consider them.

Ms. Hutt stated that when she was informed of the Senate hearing, she requested that the Review Committee be invited to appear but was told that the schedule was full. Mr. Wright, Jr., stated that when he was invited to appear at the Senate hearing, he asked for clarification and was told he was being invited as a tribal leader, not as a member of the Review Committee. Mr. Wright, Jr., stated that at its October 2009 meeting, the Review Committee reaffirmed its support for the amendment to the definition, and he expressed this position in his testimony. Mr. Wright, Jr., stated he also included in his testimony a request that the Administration be asked their position.

Ms. Atalay stated the Review Committee did discuss this issue at its last meeting and included a recommendation in its report to Congress that Congress consider amending this point. Ms. Worl stated that she was absent from that meeting, but the issue could once again be included in the Review Committee's report to Congress.

Discussion on May 11, 2012

Mr. Barker stated that he circulated, for the Review Committee members' consideration, a quick draft of a letter to the Secretary, which was shown on the screen for the audience. Ms. Worl suggested adding language that asks that the Review Committee be invited to participate when Congress convenes a hearing on NAGPRA. Mr. Wright, Jr., recommended formulating a formal engagement with the Secretary's Office on specific NAGPRA related issues, and also to focus specifically on the Administration's position on the definition. Ms. Worl suggested the following language, "The NAGPRA Review Committee respectfully requests that the Secretary engage the Review Committee and seek its position on issues relating to NAGPRA. We understand that in the past the Secretary was involved to comment, and in this situation the Review Committee's input was not sought or obtained." Mr. Wright, Jr., stated it was important to capture Mr. Barker's concern with regard to the release of the Administration's position on the

definition, as well as the issue of inclusion of the Review Committee in consultation.

Ms. Worl stated the Review Committee was dealing with two issues; the engagement of the Review Committee in working with the Secretary on NAGPRA issues, and the definition of Native American. Ms. Worl asked for clarification from counsel. Ms. Mattix stated that the Review Committee's specific duties are outlined in Section 8 of the statute. Ms. Mattix stated that this issue, an incoming Congressional question regarding interpretation or amendment of the statute, is not a delineated responsibility of the Review Committee. This was a question addressed to the DOI asking for the DOI's opinion. The Review Committee's responsibilities in the statute state that the Secretary "may ask the Committee to perform such other functions as the Secretary may assign to the Committee," so it is certainly within the Secretary's discretion to ask for the Review Committee's opinion on these types of matters, but it is not a legal obligation.

Mr. Barker redrafted the letter, which was brought back to the Review Committee for further discussion. Mr. Wright, Jr., suggested striking the word "strongly." The Review Committee approved the change. Ms. Atalay suggested a paragraph delineation for clarity. The Review Committee approved the change.

Review Committee Motion

Ms. Atalay made a motion to send the letter to the Secretary of the DOI through the DFO. Mr. John seconded the motion.

Ms. Hutt stated that if Ms. Worl would sign the letter as Review Committee Chair, Ms. Hutt would forward the letter, with a cover letter and background briefing, to the Assistant Secretary of Fish and Wildlife and Parks, who been delegated NAGPRA authority from the Secretary of the DOI.

Mr. Wright, Jr., asked about including the portion regarding the actual definition of Native American, since the Review Committee has consistently supported the amendment. Mr. Barker stated that the transcript of the previous meeting, as well as the report to Congress, will show that the Review Committee did not endorse the amendment but recommended that Congress open hearings to consider the amendment. Ms. Farm suggested revising the letter to remove the clause, "and some of our members support it." The sentence would say, "Regardless of our views of the proposed redefinition, in the future we would urge the Secretary and Department to make better use..."

Mr. Wright, Jr., asked which would have greater standing, an issue acted upon specifically by the Review Committee or a reference in the Review Committee's report to Congress. Ms. Hutt stated that could be assessed either way. The report to Congress informs the actions of Congress, and the purpose of the letter, as described by Mr. Barker, was to have Congress regard the Review Committee in any future decision making.

Ms. Worl suggested deleting the phrase, "regardless of our views on the proposed definitions and some of our members." The Review Committee approved the change.

Review Committee Motion

Ms. Atalay made a motion to send the revised letter to the Secretary of the DOI through the DFO. Mr. John seconded the motion. The motion was passed by unanimous vote.

Ms. Worl asked the wish of the Review Committee regarding the amendment to the definition of Native American. Mr. Wright, Jr., stated he was not sure that any action at this point would hold any merit with regard to the Administration's position. Ms. Worl asked Ms. Atalay to Chair the discussion. Ms. Atalay agreed.

Ms. Worl stated that, from her perspective, the Review Committee has consistently favored the amendment. Ms. Worl stated she is not aware of any opposition to the amendment from the scientific community. So it seems that in this instance, there is agreement in recommending this to Congress. This is an action that Congress will take. The Review Committee is significant in terms of stating its position as to how to deal with the issues that were raised by the Kennewick Man. So if the Review Committee wants Congress to really view the Committee that it created to deal with the issues of NAGPRA, then Congress would be looking to the Review Committee for its position. Ms. Worl stated she firmly supports the amendment, and would have no problem voting on it. If other members feel differently, then the Review Committee should hear that. Ms. Worl stated she missed the last meeting and the discussions regarding the definition.

Mr. Barker stated that he does not necessarily oppose the amendment, but he does have some concerns about it. Mr. Barker stated his concern, which was expressed in the DOI's statement, is that Native American should be determined without regard for whether there is biological or cultural affiliation with Native American groups. Mr. Barker stated that a fundamental change has occurred from what NAGPRA was based on, which was the idea that ancestral remains should be returned to descendant communities, to a new interpretation, which says it does not matter whether descendant communities receive back ancestral remains. Mr. Barker stated that he was uncomfortable with amending the law to further move from the idea of ancestral remains being returned to descendant communities, until he receives further clarity about the issue.

Ms. Worl stated she understood the amendment would not change the process for repatriation but just defines that all human remains dating after 1776 were Native American, while those predating 1776 were not Native American.

Review Committee Motion

Ms. Worl made a motion that the Review Committee consider this issue at the November 2012 meeting, and that the National NAGPRA Program provide background material concerning the issue prior to the meeting for the members' consideration. Ms. Farm seconded the motion. The motion passed by unanimous vote.

Presentation: NAGPRA Update, Bureau of Land Management

Presentation

Ms. Emily Palus, Deputy Division Chief, Division of Cultural, Paleontological Resources, and Tribal Consultation, Bureau of Land Management (BLM), DOI, Washington Office, thanked the Review Committee for the opportunity to provide an update on the BLM's implementation of NAGPRA. Ms. Palus introduced Mr. Jerry Cordova, Senior Tribal Coordinator and Acting National NAGPRA Coordinator, BLM, Washington Office, and Mr. Byron Loosle, Deputy Preservation Officer, State Archeologist, and NAGPRA Coordinator, Nevada State Office. The BLM is a multiple-use land management agency with a mission to sustain the health, productivity, and diversity of America's public lands for the use and enjoyment of present and future generations. The BLM manages 245 million acres of public lands, most of which are located in 12 western states and Alaska, and 700 million acres of subsurface mineral estates throughout the nation. BLM is a tiered organization with 12 state offices, under which are 46 districts and 133 field offices. Implementation of NAGPRA is assigned to the Cultural Resources Program, which includes management of cultural and paleontological resources on the public lands, as well as the associated museum collections, records and data, conformance with Section 106 of the National Historic Preservation Act (NHPA), and oversight of the BLM's tribal relations. BLM consults with Indian tribes on a government-to-government basis on a number of issues and projects involving management of public lands, in addition to NAGPRA work.

Ms. Palus stated that BLM's heritage resources include nearly 330,000 recorded cultural properties, 83 historic properties listed on the National Register and 38,000 properties eligible for listing, 63,000 monitored archeological sites, 390 maintained historic structures, 25,000 recorded paleontological localities. However, only about 9 percent of the 245 million acres of BLM public lands have been inventoried for heritage resources, so these figures will increase. In addition to the resources on the lands, about 10 million documented artifacts and fossils recovered from BLM lands are now located in 3 BLM facilities, 4 other Federal facilities, and 133 non-Federal museums and universities. These figures include both cultural and paleontological resources and approximately 70 of those non-Federal repositories hold archeological collections from the public lands.

At the policy level, implementation of NAGPRA is coordinated by the Washington office under the Assistant Director for Renewable Resources, Planning and the Division of Cultural, Paleontological Resources and Tribal Consultation. In addressing NAGPRA, the National Curator and NAGPRA Coordinator, a position established in 1994, provides policy oversight, technical assistance and training to the BLM state and field offices. The BLM's 12 state directors are responsible for primary operational compliance, for new discoveries of Native American human remains and cultural items found on the lands under their jurisdiction, and for collections of Native American human remains and cultural items removed from public lands prior to 1990 when NAGPRA was enacted. Staff work is assigned to the 12 state cultural program leads. Compliance with NAGPRA is one of many duties assigned to the cultural specialists, and the BLM has incorporated additional training to enhance staff capacity to implement NAGPRA. To address Section 3, New Discoveries, the BLM integrated the requirements of planning for intentional

excavations and responding to inadvertent discoveries in its land-use activities. BLM's policy is to leave burial sites and their context undisturbed whenever possible. In fact, most new discoveries do not move past notification and initial consultation as the BLM makes every effort to stabilize in place rather than excavate or remove. However, for Native American human remains and cultural items that were excavated or removed from BLM lands through April 2012, the BLM has published 34 Notices of Intended Disposition, documenting the planned transfer of 182 sets of Native American human remains, 5,211 associated funerary objects, and 3 sacred objects.

Ms. Palus stated most BLM collections are maintained in non-Federal museums and universities. The BLM works with these repositories and relies on them for the collections documentation, physical access, and intellectual and administrative information necessary for completing inventories and summaries. When NAGPRA was enacted in 1990, the BLM mobilized to locate and document archeological collections from BLM and predecessor agency public lands. This process was challenging due to the nature of the collections, limited records information, and changes in land status over time. The BLM also faced limited access to records on collecting activities, because prior to 1984, permits for study and collection of archeological resources under the Antiquities Act and ARPA were issued by the Department of Interior or the National Park Service, not the BLM. The BLM has made great use of the Interior and NPS permit records to help identify potential collections. These records span 80 years and are housed at the National Archives and Records Administration and the Smithsonian's Natural Anthropological Archives in Washington, DC.

To date, the BLM has completed inventories documenting 2,065 sets of Native American human remains and 19,840 associated funerary objects. These remains and cultural items are held in 5 BLM facilities and 36 non-Federal museums in 17 states. Of the inventoried NAGPRA items, 1,584 sets of Native American human remains and 19,026 associated funerary objects have been culturally affiliated with present-day Indian tribes, with notification provided in 61 Notices of Inventory Completion. Fifty-five of the 61 notices were for collections in the possession of a museum and in the control of the BLM. Of the culturally affiliated NAGPRA items, 1,074 Native American human remains and 14,261 associated funerary objects have been claimed and repatriated. The balance of the human remains and funerary objects are available for repatriation upon a claim. For now, the BLM continues to maintain control of the collections that remain curated in the partner museums.

The BLM has also inventoried 483 sets of human remains and 623 associated funerary objects determined to be culturally unidentifiable. This includes 2 sets of remains and 202 associated funerary objects that were subsequently affiliated with present-day Indian tribes and reported in the Notice of Inventory Completion. In addition, the BLM has published a Notice of Inventory Completion offering to transfer 10 sets of remains under 43 C.F.R. 10.11, Disposition of Culturally Unidentifiable Human Remains. From the summaries provided to tribes, 446 items have so far been identified as unassociated funerary objects, which have been culturally affiliated and published in 3 Notices of Intent to Repatriate.

The BLM recognizes that inventory and summary work is ongoing. Thirteen of the 26 notices published in the last 6 years are for remains removed from BLM lands in the possession of museums, of which the BLM was not aware until after 2006. The BLM continues to work with the museums to locate and document collections that originated from BLM public lands, and as collections are identified, the BLM will complete summaries and inventories pursuant to the timelines established in 43 C.F.R. 10.13. The Government Accountability Office report on Federal agency compliance with NAGPRA provided an opportunity for the agencies to submit a needs assessment documenting the tasks, schedules, and resources necessary to complete inventories and summaries for all NAGPRA collections. The BLM highlighted several proactive tasks to locate unknown and unreported collections, including review and update of previously completed inventories and summaries, inventory and certify the existence or absence of NAGPRA items in BLM facilities, resurvey museums with BLM collections for which no NAGPRA material was previously reported, survey museums to locate unreported collections in the control of the BLM, coordination with repositories to compile collections and catalogue data, support tribal participation in consultation activities. Stepping up these activities will require the additional resources identified in the needs assessment. However, the BLM is addressing these tasks within current capacity. NAGPRA work continues with, or without, dedicated resources.

Ms. Palus provided a brief update on the status of human remains and cultural items recovered from Spirit Cave. At the present time, the BLM has not yet resolved litigation that was filed against it by the Fallon Paiute-Shoshone Tribe, over the BLM's determination that the human remains found in Spirit Cave are not affiliated with any present-

day Native American Indian tribe. In response to the Review Committee's October 2011 request for an update, the BLM Nevada State Director sent a letter for the November 2011 meeting. That letter summarizes the history to date and current status. Ms. Palus stated that the litigation has not yet been resolved, and thus her comments were limited. Following the court's 2006 ruling, the BLM began to respond immediately to the court's direction. The BLM's efforts included internal review and consideration of existing and new information with legal guidance from the Solicitor's Office to address the deficiencies noted by the court. In 2008, BLM responded to the tribe's request for an expanded consideration of the evidence by securing funding to support a fresh review by three new and objective specialists in the fields of archeology, biological anthropology and cultural anthropology, to include traditional and ethnographic information. As part of the process, BLM also solicited new information from the tribes, or other interested parties, relating to the determination of cultural affiliation. The BLM is presently looking at the evidence to decide whether its original determination is or is not the most correct finding available. The BLM and the Solicitor's Office are reviewing the effect of the regulations regarding disposition of culturally unidentifiable human remains on the Spirit Cave case. Ms. Palus stated that, in consideration of these ongoing processes and Solicitor review, the BLM cannot yet provide any definitive statement relating to the human remains and cultural items from Spirit Cave.

Ms. Palus summarized the BLM's enforcement of Section 4, the prohibition on trafficking of Native American human remains and cultural items. NAGPRA is one of many statutes enforced by the BLM. Most investigations involving Native American human remains and cultural items involve several other statutes in addition to NAGPRA, including the Archaeological Resources Protection Act, Theft of Government Property, Theft of Tribal Property, Depredation Against Federal Property, among others. These statutes can apply to burial locations and archeological sites, while Section 4 of NAGPRA is limited to trafficking activities. The BLM Cultural Resource Program provides support to law enforcement on investigations involving Native American human remains, cultural items, archeological sites, artifacts and other cultural resources, and pursues violations of laws protecting cultural resources. Recently, the BLM pursued two large-scale, multi-year investigations, "Operation Bring Them Back" in Oregon, and "Cerberus Action" in the Four Corners Region. These investigations have so far resulted in the conviction of 39 defendants and the recovery of hundreds of thousands of Native American artifacts. As the collections are released from law enforcement, inventory of the collections will be completed pursuant to the timelines established in 43 C.F.R. 10.13, Future Applicability or following procedures for new discoveries if the materials were removed from public lands after NAGPRA was enacted in 1990.

Ms. Palus discussed the issue of reburial on BLM lands. Prior to September 2006, BLM policy prohibited the reburial of Native American human remains and cultural items on public lands. This policy position was due to the fluid nature of multiple-use parcels and the concern about future protection for reburied items and potential for disturbance due to land-use actions. In 2006, BLM leadership determined that careful selection of reburial locations could help overcome prior concerns. The BLM issued new policy that allows authorization of reburials on a case-by-case basis. The BLM's policy is to rebury as close to the original location as possible, when possible. BLM evaluates land selection and status, NEPA and NHPA requirements, tribal access, legal and physical protections and budget concerns. The BLM policy requires that disposition has been concluded, with completion of transfer of custody prior to reburial. To date, the BLM has received eight requests to rebury human remains and cultural items, all of which were approved and have successfully concluded. In addition, the BLM has reburied human remains that were from lands that have since become BLM lands, and initial discussions are underway regarding reburial of remains that were collected from GLO lands in the 1880s, prior to the Antiquities Act when the Federal Government first started regulating recovery of antiquities for which the BLM does not have control. The basis for reburial on BLM lands is that the ancestors were originally buried on BLM lands.

Ms. Palus stated that the BLM's NAGPRA activities focus on integrating NAGPRA responsibilities for new discoveries and land-use activities, completing NAGPRA documentation on collections removed from public lands and held in non-Federal repositories as they are identified, and pursuing protection of NAGPRA cultural items through law enforcement activities. In addition, BLM staff has served on the NAGPRA grants panel, given presentations at the Federal NAGPRA coordinators group, the *NAGPRA at 20* symposium, and other national and regional conferences, assisted other agencies in their compliance efforts, provided training, and served on National NAGPRA rulemaking committees. BLM maintains a modest but dedicated NAGPRA effort. NAGPRA requires thoughtful and respectful consultation and documentation to identify Native American human remains and cultural items and determine cultural affiliation leading toward repatriation or transfer of custody.

Mr. Byron Loosle, Deputy Preservation Officer, State Archeologist and NAGPRA Coordinator, Nevada State Office, BLM, provided a brief overview of the Cerberus Action in the Four Corners Region. Cerberus is a joint investigation of the FBI and BLM law enforcement, developed through an undercover source that was well integrated into the trafficking of Southwestern artifacts. In 2009, 24 indictments were unsealed from a grand jury investigation, and search warrants were conducted in June of 2009. The source's information, background, and contracts were used to infiltrate the close-knit network. Mr. Loosle stated that cases are hard to prosecute under ARPA, unless people are caught in the act. In this case, the source was able to convince people to show where the artifacts came from, and the people would then produce fraudulent letters that the artifacts came from private land. During the investigation, 256 artifacts were purchased for over 300,000 dollars; the money came from the FBI. The case involved at least two illegal, unauthorized excavations. Through the source, law enforcement was able to approach all three levels of the organization, excavators, middlemen, and collectors, which was a unique situation for this type of investigation. Mr. Loosle stated that, in Utah, 14 search warrants were executed and 27 individuals were indicted; 12 felony and 5 misdemeanor convictions have resulted. Ten collections of artifacts have been seized, containing anywhere from just a few items to thousands of artifacts, and two more small collections need to be forfeited.

Mr. Loosle stated that BLM law enforcement has found that ARPA and NAGPRA are not very effective for prosecuting cases, and this reality is discouraging. A first offense NAGPRA indictment is a misdemeanor. The most effective mechanism for prosecuting these individuals is theft of Government property. Mr. Loosle reviewed the details of the Redd Case and explained the steps of the investigation through the court process.

Mr. Loosle stated that a decision had to be made whether to treat these cultural items as a new discovery or a collection, and except for the excavations that occurred, the forfeitures were treated as collections. Although the excavation dates are unknown, some of these individuals have been excavating for over 40 or 50 years. Mr. Loosle stated that unless the Review Committee advises otherwise, the cultural items will be pursued from a collection strategy. Another complication is the timing of when collections are released into the custody of the BLM, which varies due to the ongoing nature of the case. This complicates consultation, and the BLM has decided to conduct consultation with the nearly 30 tribes after receiving all of the collections, unless the Review Committee advises otherwise.

Mr. Loosle stated that one of the more difficult aspects of the case was the decision to go ahead and allow the excavations to occur, which was deemed necessary as the law does not factor intent, only actual excavation. BLM leadership decided to go ahead and allow the excavation to proceed. In 90 minutes, an amazing amount of damage was done, and the site was backfilled with almost no evidence that an excavation had occurred. Some human remains were disturbed during the excavation. The collections contain basically the full spectrum of NAGPRA items, with a limited amount of human remains and many objects that appear to be funerary objects, sacred items, and possibly items of cultural patrimony. Part of the process of working with the FBI and BLM law enforcement was to provide education on how to properly handle these artifacts, to ensure protection during both the seizure and storage processes. The BLM has a temporary repository in Salt Lake, where these artifacts are currently housed and will remain until permanent disposition. Mr. Loosle stated that many of the artifacts were found to be fakes or replicas, and described several pieces that had been altered.

The BLM has done extensive tribal consultation, beginning even before the collections were returned to the BLM. Consultation has included an all-tribes meeting in Salt Lake City, several visits and consultations with individual tribes or regional groups, as well as numerous letters. The BLM will follow ARPA and NAGPRA processes as to proper disposition, once the artifacts are transferred to the BLM. The BLM hopes that the pursuit of cases such as these will help limit the looting of new sites, increase the public's awareness about the sensitivity of cultural items, and decrease the demand for trafficked items.

Review Committee Questions and Discussion

Ms. Atalay thanked Ms. Palus and Mr. Loosle for their presentations, and asked for information on how many human remains and associated funerary objects under BLM control are not listed in either published inventories or the culturally unidentifiable human remains database. Ms. Palus stated that the BLM is working with the National NAGPRA Program to clarify and reconcile the data in the public databases to ensure accuracy. Nearly all known collections from BLM lands have been listed in inventories and published in Notices of Inventory Completion. Ms. Palus stated that the BLM has been working in consultation with tribes on completing the inventory for one

collection of a sensitive nature. This work is proceeding slowly, at the pace requested by the tribes. When the inventory is finalized, it will be submitted to the National NAGPRA Program and the Notice of Inventory Completion will be published. Ms. Palus stated that this work will continue as long as collections are identified.

Ms. Atalay asked if the BLM had proposed a timeline to the repositories for completion of work plans and the work. Ms. Palus stated that the work plan identified in the BLM's needs assessment calls for a process of working with repositories bit by bit, as staff capability and resources allow. The BLM is currently focusing on working with repositories that are readily willing to complete the work, and will ultimately work with a total of approximately 70 repositories. The BLM is working to establish a Memoranda of Understanding (MOU) with repositories that hold BLM collections. The MOU are nonfinancial arrangements that delineate the roles and responsibilities between the BLM and a repository. This work is done by BLM's state and field archeologists.

Regarding the process for the forfeited collections from the court cases, Mr. Barker asked if the tribes were in favor of waiting until all of the collections were returned to the BLM before beginning the consultation process. Mr. Loosle stated that the tribes agreed with that plan, which will allow better use of resources for meetings and travel. Ms. Worl stated that, as long as the tribes concur with the process and consultation is conducted, the Review Committee would not have an issue.

Mr. Wright, Jr., asked for clarification of the classification of the forfeited items as a collection when they were received by the BLM after 1990. Ms. Palus stated that the majority of those collections, while received by the BLM after 1990, were excavated prior to 1990, and would fall under the collection side of NAGPRA. In addition, the collections side of NAGPRA has a more regulated process with a national notification process through *Federal Register* publication. The collections excavated during the case clearly fall, and will be handled, under Section 3.

Mr. Hemenway stated he was concerned about some of the comments concerning repositories, from both this presentation and the prior presentation by the BIA. Mr. Hemenway stated that the Federal agencies hold the responsibility to manage these collections and work with tribes, not the museums. However, he has experienced instances where he has been stuck in a limbo, of sorts, between the Federal agency and the repository. Ms. Palus stated that there is no question that this is a very difficult situation, and it is concerning that tribal representatives are frustrated. Ms. Palus stated that clarification of the terms "control" and "possession," and the roles and responsibilities for each, would be extremely helpful. Ms. Palus stated that some repositories are fantastic and eager to work with Federal agencies, while others have made the decision to postpone work on collections from Federal agency lands, to the extent that the Federal agencies might not be aware of the collections. Ms. Palus stated she was encouraged that the Review Committee has taken an interest in this issue and looks forward to future conversations.

Ms. Atalay asked for clarification of what Ms. Palus meant by survey or review of collections in repositories, and asked whether the BLM was making field visits to confirm collections. Ms. Palus stated that the term "survey" can be used loosely. The BLM has been increasing coordination with the repositories and have the responsibility to assess condition of collections. BLM staff does visit repositories and complete condition assessments on a five-year basis. This is required under a DOI directive through the Museum Program. The BLM has initiated a survey project, with the help of the U.S. Army Corps of Engineers, Mandatory Center for Expertise in Archeological Curation, to help identify BLM archeological collections, including those subject to NAGPRA. Ms. Palus stated that repositories may not recognize some sites as BLM lands. Ms. Palus stated that a lot of the materials were collected by researchers associated with the institution, which has had access to the collections over the years. Federal agencies rely upon the museums quite a bit to provide curatorial services, but the relationship is mutually beneficial. Ms. Atalay stated that this situation does raise the question of what "control" really means, if Federal agencies cannot really make repositories do anything regarding collections under the control of the Federal agencies.

Ms. Farm thanked the parties for their presentation and asked for clarification of the BLM reburial policies and the issue of liability and protection in perpetuity. Ms. Palus stated that each case is handled individually, with site selection being the most important decision. Locations are carefully selected, in areas where future development is truly unlikely and reburial is consistent with land-use plans. The BLM considers if there will be a National Environmental Policy Act (NEPA) impact, as well as the physical and legal protection issues. Site monitoring plans are developed and incorporated into the BLM's annual cultural site monitoring plan. The BLM prefers to have a reburial agreement with the tribes, although this is not required, that defines the roles, expectations and responsibilities for each. Legal protection is more complicated, and the BLM is seeking an opinion on whether

reburial sites are considered archeological resources and, as such, protected under the Archeological Resources Protection Act (ARPA).

Mr. Wright, Jr., asked for a copy of the presentation. Ms. Worl stated that it would be helpful if the BLM could provide copies of any policies or procedures dealing with burial issues, to assist the Review Committee's reburial subcommittee. Ms. Palus agreed to provide this information. Ms. Worl thanked the BLM for their presentation, and stated it would be helpful if the Review Committee could receive updates from additional Federal agencies at future meetings.

Presentation: Fallon Paiute-Shoshone Tribe

Presentation

Chairman Alvin Moyle, Fallon Paiute-Shoshone Tribe, thanked the Review Committee for the opportunity to make a presentation regarding the tribe's repatriation request for the Spirit Cave human remains under 43 C.F.R. 10.11. Chairman Moyle introduced Ms. Jacqueline Allen, council member, Fallon Paiute-Shoshone Tribe. Chairman Moyle presented materials to the Review Committee in support of its repatriation request. Chairman Moyle stated that the regulations state under Subsection (2)(i), "From whose tribal lands, at the time of removal, the human remains and associated funerary objects were removed," and (2)(ii), "From whose aboriginal lands the human remains and associated funerary objects were removed." Chairman Moyle presented documentation demonstrating the Fallon Paiute-Shoshone Tribe's status as a federally recognized tribe, as well as its aboriginal lands connection according to the Indian Claims Commission maps.

Chairman Moyle gave a brief history of the Spirit Cave human remains. The Nevada State Parks Commission hired archeologists Sydney M. and Georgia Wheeler to investigate caves located six miles south of the Fallon Paiute-Shoshone Reservation in Churchill County, Fallon, NV. On August 11, 1940, the Wheelers discovered two burials in Spirit Cave dating back to the early Holocene period, including the human remains that would eventually become known as the Spirit Cave Man. In 1994, the Spirit Cave human remains were determined to be over 9,000 years old. Chairman Moyle referenced numerous instances where scientists have conducted or developed analyses of the Spirit Cave human remains, funerary objects, and artifacts. Chairman Moyle stated that he had to initiate consultation with the BLM regarding the Spirit Cave human remains following publication of the rule.

Chairman Moyle stated he would like to request the support of the Review Committee regarding the repatriation of the Spirit Cave human remains. Ms. Allen stated she agreed with Chairman Moyle, the Spirit Cave ancestor needs to come home.

Review Committee Questions and Discussion

Ms. Worl stated that this issue previously came before the Review Committee as a dispute, and requested a summary of the issue. Ms. Mattix stated that the Review Committee considered this dispute between the Fallon Paiute-Shoshone Tribe and the BLM in November 2001, where six of the seven members found that the preponderance of the evidence indicated a relationship of shared group identity, which can be reasonably traced between the present-day Fallon Paiute-Shoshone Tribe and the human remains and associated funerary objects from Spirit Cave in Nevada. The Review Committee findings were published in the *Federal Register*.

Ms. Palus referenced the Nevada State BLM's summary of the issue from November 2011. Following the Review Committee's recommendation, additional discussions occurred between the tribe and BLM, and the issue was elevated to the BLM Director at the Washington Office. In February 2004, the BLM Director sent a letter to the tribe stating that the tribe's concerns had been addressed and there was no further course of action to be taken at the time. In 2004, the tribe initiated legal action against the BLM in the case of Fallon Paiute-Shoshone Tribe versus the United States Bureau of Land Management. The tribe alleged, and the court ruled, that the BLM's determination was arbitrary and capricious under the Administrative Procedures Act, because the scientific evidence provided by the tribe to the BLM prior to its determination was not properly considered in the BLM's initial determination; the BLM did not consider the findings of the Review Committee when its final decision was contested; and the BLM failed to consider the scientific evidence that was provided to the Review Committee after the BLM's determination. In its 2006 order, the court determined that the BLM made no error in the procedures employed in making its initial determination of nonaffiliation. Error arose when the BLM dismissed the evidence provided by the tribe in support

of its repatriation request, including evidence which arose through the Review Committee proceedings, without fully explaining the reasons behind the BLM's actions. This ruling came out in the fall of 2006, and the BLM immediately responded to the court's direction with continued consultation and communication with the tribe. This additional review included the hiring of three independent consultants, and the BLM continues this review, as well as review of the applicability of 43 C.F.R. 10.11, with the Solicitor's Office.

Ms. Worl asked what the Review Committee's options were in responding to this request. Ms. Hutt stated that at this point, this issue was presented as an informational piece and is not yet at the level of an action item or a dispute. Ms. Worl stated it would be appropriate for the parties, Review Committee Chair and the DFO to hold discussions on the best way to move forward on this issue. Chairman Moyle stated he was aware when he brought this issue to the Review Committee that he had missed the deadlines for any action items. Chairman Moyle stated he had recent discussions with staff from the Reno office of the BLM, and looked forward to continued consultations.

Mr. Wright, Jr., stated that this case is an example of exactly what tribes face across the country, with repeated delays. Mr. Wright, Jr., stated he did not think the tribe would be satisfied with the result of this issue, as the theory promoted by the BLM in Nevada would basically be reversed if the BLM were to repatriate these human remains under the terms of the original Review Committee findings.

Mr. Hemenway thanked the parties for their presentation and reiterated Ms. Worl's suggestion about reopening discussions regarding this case. The recent publication of 43 C.F.R. 10.11 has opened a new avenue that might be helpful in resolving this issue.

Ms. Farm stated she understood the concerns underlying this issue, but was concerned about whether the Review Committee would have jurisdiction to reconsider this issue, depending upon the scope of the remand from the district court. Ms. Farm asked counsel to ensure that the Review Committee could facilitate further discussions regarding this issue.

Presentation: NAGPRA Update, UC Berkeley

Presentation

Ms. Mari Lyn Salvador, Director, Phoebe A. Hearst Museum of Anthropology (Hearst Museum), thanked the Review Committee for the opportunity to provide an update on NAGPRA implementation at the Hearst Museum. The Hearst Museum holds diverse collections, totaling an estimated 3.8 million objects. NAGPRA considerations form a central part of the Hearst Museum's vision and are currently considered a primary priority. The University of California – Berkeley supports the Hearst Museum's NAGPRA compliance efforts and in 2010 provided funding for additional NAGPRA staff. The NAGPRA team now has five full-time staff, including Mr. Jordan Jacobs. Mr. Jacobs recently joined the Hearst Museum staff, after five and a half years as repatriation manager at the American Museum of Natural History in New York. Mr. Jacobs's vast NAGPRA experience will help professionalize and strengthen the Hearst Museum's NAGPRA program.

Ms. Salvador stated that in 2011, the University of California system provided funding to move the staff, students and collections out of the Hearst Gym basement into Kroeber Hall. This will provide a safe, respectful environment to support NAGPRA implementation through consultations, ceremonies, staff work space and records storage.

Ms. Salvador stated that the Hearst Museum submitted its NAGPRA inventories in 1999 and 2000. Unfortunately, the documents had problems with both formatting and content. In an effort to address the situation, the Hearst Museum started its inventory reformatting project, which will result in the reformatting and resubmission of all of its 128 original inventories. While the original inventories were complete and done with full tribal consultation and thorough research, Hearst Museum staff view this as an opportunity to review the determinations to try to make additional cultural affiliations and correct any errors. The Hearst Museum will prioritize resolution of current and future NAGPRA claims while undertaking this project, with a project completion goal of the end of 2014.

Review Committee Questions and Discussion

Ms. Worl thanked Ms. Salvador for her presentation and noted the progress that the Hearst Museum has made since its previous reports to the Review Committee. In light of discussions regarding repositories, Ms. Worl asked

whether the Hearst Museum is acting as the repository for any Federal agencies, and if so, a description of the number of human remains and whether they are represented in notices. Mr. Jordan Jacobs stated that was an issue that the Hearst Museum was currently working to resolve. Mr. Jacobs estimated that of the 9,200 MNI in the Hearst Museum's collection, approximately 500 are actually Federal collections. Ms. Atalay asked about the Hearst Museum's timeline for resolving the issues regarding both the Federal collections and the museum's collections. Mr. Jacobs stated that the Hearst Museum hopes to have completed this work within the next two years, but that will also depend upon the number of claims that are submitted. Ms. Salvador stated she wanted to address a public concern that the Hearst Museum will close during the moving process, and she assured the Review Committee and the public that the move will have no impact on NAGPRA progress or consultation efforts.

Public Comment – May 9, 2012

Vice-Chairman Bradley Hight/Mr. Alden Naranjo

Vice-Chairman Bradley Hight, Vice-Chairman, Ute Mountain Ute Tribe, stated he wanted to clarify comments made earlier regarding the Colorado Lands Repatriation Working Group. The group's request of the Review Committee was to consider reburial options for the repatriation and disposition of Native American human remains, both culturally affiliated and culturally unidentifiable, not originating from Federal or tribal lands and not repatriated from Federal agencies.

Mr. Alden Naranjo, NAGPRA Coordinator, Cultural Preservation Office, Southern Ute Tribe, stated that since NAGPRA was passed, the process has been a long, uphill battle for the tribes. Mr. Naranjo stated that the tribes are just asking for part of their ancestral lands to reinter ancestral remains so that they can rest in peace. Vice-Chairman Hight stated that he would like to welcome the Review Committee to Colorado for a meeting in the fall of 2012 or spring of 2013.

Mr. Chuck Smythe

Mr. Chuck Smythe, Ethnography Program Manager and NAGPRA Coordinator, Northeast Region, National Park Service, stated he would like to comment on the difficult nature of finding lands for reburial. Mr. Smythe shared his experiences working with the Delaware Tribe. The Delaware Tribe lived in areas of Pennsylvania, New Jersey, New York and Long Island. In 1750, the Delaware Tribe was exiled from their homelands and moved to Oklahoma and Wisconsin, where they currently remain under three federally recognized tribes. The Northeast Region, NPS, has worked with the Delaware Tribe for the past ten years, and has held two reburials and numerous Section 106 consultations. The tribe feels the human remains should be reburied in the area in which they inhabited, and does not wish to take the human remains to Oklahoma or Wisconsin for reburial. The tribe has encountered many of the same difficulties described by other tribes in trying to locate reburial sites on Federal lands within their aboriginal homelands. Mr. Smythe stated that while the NPS cannot accept reburials of human remains that originated from outside the park boundaries, the Northeast Region will help the tribes by facilitating discussions with other agencies.

Ms. Worl stated that comments such as this reaffirm the growing importance of, and need to address, this issue.

Mr. John Norder

Mr. John Norder stated he was present at the meeting as an observer for the Society for American Archaeology (SAA). The SAA appreciates being able to observe and thanks the Review Committee for this opportunity.

Adoption of Agenda – May 10, 2012

Review Committee Motion

Ms. Atalay made a motion that the Review Committee adopt the agenda. Mr. Barker seconded the motion. The motion was passed by unanimous vote.

Action Item: Review Committee Comment on the Proposed Rule Concerning Procedures for the Disposition of Unclaimed Human Remains and Cultural Items Discovered on

Federal Lands After November 16, 1990, to be Codified at 43 C.F.R. 10.7, and Minor Amendments to 43 C.F.R. Part 10

Ms. Hutt stated that the issue before the Review Committee was the minor amendments to 43 C.F.R. Part 10. These are technical amendments that were put forward to be of assistance to people in working with the regulation, without making any substantive changes. These minor amendments were published on April 18, 2012, with an open comment period until June 18, 2012. The minor amendments are available on the National NAGPRA Program Website at <http://www.nps.gov/nagpra/MANDATES/INDEX.HTM> under "Regulatory History." Following the comment period, the minor amendments will become final. During the comment period, comments will be accepted from anyone wishing to comment. As described earlier, Mr. Tarler will be working to draft a full set of amended regulations, which will be presented to the Review Committee for review when complete.

The minor amendments were summarized and discussed, as follows:

- Section 10.2, Definitions, paragraph (c)(1) – The amendments clarify the definition of Secretary to reflect the Departmental delegation of the Secretary's authority under NAGPRA, as defined in the 2005 Secretarial Order. Mr. Barker asked for clarification that this change would not affect the reporting and advising responsibilities of the Review Committee to the Secretary. Ms. Mattix confirmed that it would not. The Review Committee accepted the amendments.
- Section 10.5, Consultation, paragraph (b)(1)(i) – The amendments clarify that while lineal descendants are included in consultations on human remains and funerary objects, they are not included for sacred objects or objects of cultural patrimony. This change will ensure the regulations are consistent with the statute. The Review Committee accepted the amendments.
- Section 10.6, Custody:
 - Paragraph (a)(2) – The proposed rule adds reference to the cultural relationship with the human remains. In addition, in the proposed rule the requirement that a lineal descendant needs to make a claim for human remains and associated funerary objects was removed. Ownership in these situations does not depend on assertion of a claim, and this change will ensure the regulations are consistent with the statute.
 - Paragraph (a)(2)(iii)(B) – The amendments correct the current regulations, which inadvertently state that the cultural relationships would be only to objects. The proposed rule would correct this admission by adding a reference to the cultural relationship with the human remains.

The Review Committee accepted the amendments.

- Section 10.8, Summaries, paragraph (e) – The amendments replace the ambiguous term "individuals" with the statutory term "lineal descendants." The Review Committee accepted the amendments.
- Section 10.10, Repatriation:
 - Paragraph (a)(1)(ii)(B) and (b)(1)(ii)(B) – The amendments in this section would remove the incorrect reference to Section 7(c) of NAGPRA and replace it with Section 7(a)(4) (25 U.S.C. 3005(a)(4)).
 - Paragraph (c)(2) – The proposed rule would clarify exceptions to the requirements for repatriation applies where: There are multiple competing requests for repatriation; and the museum or Federal agency, after complying with the regulations, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. Ms. Farm asked about the change to replace "these regulations" with "this part." Ms. Mattix stated that change was to be a broader interpretation, referencing the entire regulation.
 - Paragraph (g) – The proposed rule clarifies that the Review Committee still is responsible for recommending a process for disposition of culturally unidentifiable human remains not now covered by 43 C.F.R. 10.11. Mr. Barker stated that the regulations as published are not based on the recommendations developed earlier by the Review Committee. Ms. Hutt stated that there were many different, and sometimes conflicting, positions of the Review Committee over time. After 10.11 was drafted, the Review Committee was consulted during the comment period. Mr. Barker stated anyone was allowed to comment on the draft regulations, and the fact that the Review Committee was allowed to comment during the comment period does not really qualify as submitting recommendations to the Secretary for what the policy should be. Ms. Hutt stated that Mr. Barker was correct that anyone can comment on the regulations; however, it was also incumbent upon the program to afford opportunity for the Review Committee to comment.

The Review Committee accepted the amendments.

- Section 10.11, Disposition of Culturally Unidentifiable Human Remains, paragraph (b)(2)(ii) – The proposed rule would expand the sources for determining aboriginal lands, under Section 10.11, to include: final judgment of the Indian Claims Commission or the United States Court of Claims, treaties, Acts of Congress, or Executive Orders. Mr. Simpson stated that this was a broadening of previous sources, but explained that the change was for Section 10.11 only, and would not apply to Section 3(a) of NAGPRA, where recognition of aboriginal land is only by final judgment of the Indian Claims Commission or the United States Court of Claims. The Review Committee accepted the amendments.
- Section 10.12, Civil Penalties – The amendments in this section were ministerial with updated contact and address information, as well as clarification of the hearing procedures set forth in the DOI regulations. The Review Committee accepted the amendments.
- Section 10.13, Future Applicability, paragraph (c)(2) – The proposed rule corrects an incorrect citation, 25 U.S.C. 479a-1 (2006), regarding publication of the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. The Review Committee accepted the amendments.
- Section 10.15, Limitations and Remedies:
 - Paragraph (c)(1) – The proposed rule clarifies that administrative remedies relate to only Federal agencies and not to museums.
 - Paragraph (c)(1)(ii) – The proposed rule clarifies that Federal collections, rather than Federal lands, are subject to 43 C.F.R. Part 10, Subpart C.

The Review Committee accepted the amendments.

Review Committee Motion

Ms. Farm made a motion to accept the changes to the proposed rule. Ms. Atalay seconded the motion. The motion passed by unanimous vote. Mr. Wright, Jr., asked if action by the Review Committee would preclude further comments. Ms. Hutt stated that comments from anyone would be accepted through the open comment period.

Presentation: Columbia Plateau Inter-Tribal Repatriation Group

Presentation

Ms. Jacqueline Cook, Confederated Tribes of the Colville Reservation, thanked the Review Committee for the opportunity to provide testimony on their NAGPRA experience. The Columbia Plateau Inter-Tribal Repatriation Group consists of the tribes and bands from the Columbia Plateau in the Pacific Northwest states of Washington, Idaho, and Oregon. These include the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, and the Wanapum Band of Priest Rapids, a non-federally recognized Indian group. Ms. Cook stated these groups have chosen to work together to fulfill their responsibility to ensure that their ancestors are returned to the earth.

From 2005 through 2011, the Columbia Plateau Inter-Tribal Repatriation Group has repatriated a minimum number of 1,144 individuals, 30,299 associated funerary objects, and 28,889 unassociated funerary objects from 51 institutions under NAGPRA, and the National Museum of the American Indian Act, and Washington State's Human Remains law. In 2011, repatriations included a minimum number of 98 individuals and 1,702 funerary objects from 6 institutions.

Ms. Cook stated that the Columbia Plateau Inter-Tribal Repatriation Group would like to address some issues of concern, as follows:

- Notice Publication – Request that National NAGPRA streamline and shorten the timeframe for review and publication of Notices of Inventory Completion and Intent to Repatriate in the *Federal Register*, due to concern about delay of initial review of submitted notices for six to eight weeks after receipt, and an additional 20 to 60 days to publish in the *Federal Register*, following final approval by the institution. Ms. Cook acknowledged the changes in staffing and the progress made, with over 70 notices published since January.
- Repatriation Grant Process – Request that National NAGPRA review their repatriation grant process,

including asking whether the availability of funds for repatriation from the museum/Federal agency is addressed in the application, and reconsideration of what is funded under this program. Ms. Cook stated that concern over the availability of repatriation grants to all tribes prompted a review of how repatriation grants were being used. A short survey was conducted, covering the 12 repatriation grants awarded in FY 2011 for a total of \$121,982.01. Eight of the grants went to tribes and the remaining four to museums. The study considered costs associated directly with the repatriation actions, administrative costs, matching costs, distances between museum and tribe, the amount to be repatriated, whether repatriated items were shipped or hand-carried, and whether the grant applicant has an FY 2010 or FY 2011 documentation/consultation grant.

- Seventy-one percent (\$86,000+) of the money allocated went to the costs associated directly with repatriation actions. These actions included consultation fees, supplies, material, travel and other direct costs, such as stipends for tribal members, food for ceremonies, and grave preparation.
- Twenty-nine percent (\$35,000+) of money allocated went to administrative costs that included salary and wages, fringe benefits, indirect and other costs. Three applicants did not charge administrative costs to the grant. Six applicants had administrative costs that were less than 27 percent of the grant monies received by the applicant. Three applicants had higher administrative costs, at 61.5 percent, 66.3 percent, and 81.2 percent. Five applicants indicated match amounts, which were for salary, wages, fringe benefits and indirect costs.

Ms. Cook stated, as noted earlier by Ms. Hutt, that over the last three years repatriation grant requests have increased 300 percent. Repatriation grants are noncompetitive and are funded on the first-come-first basis from October 1 through June 30. After June 30, the remaining money is used for competitive consultation and documentation grants. In FY 2011, there was not enough money to support all recommended consultation and documentation project grants after repatriation grants funding was allocated. One way the National NAGPRA Program could increase the availability of grant funds would be to limit repatriation grants to those costs associated directly with repatriation costs. For FY 2011, this would have resulted in an additional \$35,000 of funds available for documentation and consultation grants.

- Kennewick Man – Request that the National NAGPRA Review Committee report to Congress the continued tribal concerns over the Kennewick Man or Ancient One. The descendant claimant tribes continue their vigil for the Ancient One, and have communicated with Magistrate Jelderks and the Corps of Engineers to impose reporting deadlines and peer review on the plaintiff scientists. To date, the Corps has received minimal progress reports and was allowed limited review of draft manuscripts. The tribes want to be confident all associated records are turned over to the Corps to ensure that they are able to appraise and consider future research requests based upon all available information. The claimant tribes have requested that any further studies utilize the data already collected and that scientific access to this collection be restricted due to the culturally offensive practice of studying ancestral remains, the multiple studies completed to date, and the fragile nature of the Ancient One. The Plateau Tribes conduct annual visits to the Ancient One for ceremony and continue to pursue avenues for his return. In an effort to protect ancestors, the claimant tribes have begun working with lobbyists and elected officials to resurrect legislation to change NAGPRA law. The Plateau Tribes request that the Review Committee recommend to Congress that the NAGPRA legislation be amended to cover this issue and other issues that have arisen over the last 20 years of implementation. The Plateau Tribes hope that any amendments to the law or revisions to the regulations will include ample consultation.
- Federal agency compliance/Bureau of Indian Affairs – Request that the NAGPRA Review Committee report to Congress about the continued issue of Federal agency compliance. The July 2010 GAO report highlighted many of the issues the tribes had been reporting. The Columbia Plateau Inter-Tribal Repatriation Group has been, and continues to be, concerned about the NAGPRA implementation efforts of a number of Federal agencies, including the Corps of Engineers and the BIA. Although happy to hear reports during this meeting about the positive progress made by the BIA, concern remains over lack of information on the number, scope or locations of NAGPRA collections which remain in the control of the BIA. The GAO report identified that there is a correlation between levels of efforts and accomplishment of tasks and having established policy, procedures, staff and funding resources. Congress needs to continually hear and hopefully understand the need for additional monies in order to accomplish the necessary work. Continuing to send that message to the Review Committee's Report to Congress can strengthen the message that there is much work left to be done even after 20 years. Ms. Cook stated they would like to see the National NAGPRA Program conduct a study for both museums and Federal agencies to understand the full image of compliance.

- National Training – Request that the National NAGPRA Program continue to support and provide venues for training. There is still a large need for training, including basic NAGPRA training, due to changes in staff at both tribes and museums, newly recognized tribes, and tribes who are just beginning to deal with NAGPRA. Ms. Cook stated they recommend that those trainings occur across the country within regional areas and in a timely manner.

Mr. Rex Buck, Wanapum Band of Priest Rapids, thanked the Review Committee for the opportunity to speak. Mr. Buck stated that the people of the Wanapum Band of Priest Rapids have never lived anywhere else; they have lived in the same place, doing the same thing, for hundreds and thousands of years. The Wanapum Band speaks their own language, conducts their own ceremonies, and has a responsibility to their land, their resources, and their ancestors. The Wanapum Band supports the Columbia Plateau Inter-Tribal Repatriation Group and its work. Mr. Buck expressed appreciation that the Review Committee and the National NAGPRA Program understands and continues to afford opportunity for the Wanapum Band to provide comments, even though they are not federally recognized. Mr. Buck encouraged the younger people to learn their language and culture to understand the responsibility with which they have been entrusted.

Mr. Armand Minthorn, Confederated Tribes of the Umatilla Reservation, stated that throughout the years the tribes have come to learn a great deal while working together to rebury their ancestors, including how important it is to work with, and have a relationship with, Federal agencies. The tribes help the Federal agencies comply with the law, maintaining consultation, while working together and maintaining a long-term relationship. Relationships can go a long way with Federal agencies, and the results of those relationships cannot be emphasized enough. The tribes have received guidance from Elders on how to care for both the ancestors and themselves. However, many of the Elders are now gone, leaving others to try to follow their examples and teachings to continue this work.

Mr. Minthorn stated that work still needs to be done in working with culturally unidentifiable human remains, what is termed “culturally unidentifiable.” These human remains are Native American, period, and need to be treated as sacred. It is a challenge for tribes to work with culturally unidentifiable human remains. While tribes can work through this issue with Federal agencies, it emphasizes the importance of committees, such as this, to oversee the correct interpretation and application of the law.

Mr. Minthorn stated that the reports provided by the BLM and the BIA were encouraging, but also very frustrating for tribes, in particular with the Bureau of Indian Affairs. Staff and resources are very limited within the BIA, which results in a very slow process and minimal results. Tribes continue to have concern due to lack of knowledge on the part of agency staff about the status of NAGPRA collections under Federal agency control, the amount of time predicted for Federal agencies to come into compliance with NAGPRA, as well as the lack of Federal agency staff knowledge regarding NAGPRA. Mr. Minthorn asked the Committee to be very vigilant in monitoring the Federal agencies and to demand results from the BIA and the BLM. The Review Committee’s authority has to be very clear, and it is important that all of the Committee members support their Chair. The Review Committee needs to be assertive and aggressive in working with NAGPRA to ensure that museums, universities and Federal agencies comply with the law. The Review Committee needs to be able to ask questions and be vigilant on results. The Review Committee needs to meet more often than twice a year, in locations that are readily accessible to tribes.

Mr. Minthorn stated that all those working with NAGPRA need to understand the sacred nature of this work. Mr. Minthorn thanked the Review Committee for their time and encouraged them to continue with this work.

Mr. Allen Slickpoo, Jr., Nez Perce Tribe, stated he currently serves on the tribal council in the capacity of the Secretary of the Governing Body. The Nez Perce Tribe is a resource tribe and deals with a number of agencies. Mr. Slickpoo, Jr., stated that the repatriation work of the Columbia Plateau Inter-Tribal Repatriation Group is setting the tone for other tribes. Mr. Slickpoo, Jr., stated that through economic growth, a lot of inadvertent discoveries were happening in their area. The Review Committee’s support of the Columbia Plateau Inter-Tribal Repatriation Group’s requests is vital to help the tribes accomplish their work. This work is very important to the tribes, in order to sustain their sacred ways and culture, despite the growth of the modern-day society.

Review Committee Questions and Discussion

The Review Committee thanked the parties for their presentation, and noted that the Columbia Plateau Inter-Tribal Repatriation Group’s recommendations would be discussed by the Review Committee later during the meeting.

Ms. Worl stated she wanted to address the concerns and recommendations raised by the Columbia Plateau Inter-Tribal Repatriation Group.

Notice Publication – Ms. Worl stated that the group recommended tighter deadlines. Ms. Atalay stated that the group noted the staffing issues but acknowledged that notice publication was moving forward. Ms. Atalay asked for an estimate of an appropriate timeline for notice publication. Ms. Hutt stated that the notice process contains two timelines; from the time a notice is submitted to the program to the time it is ready for approval by the originator, and then from the time the signature is submitted from the originator to when the notice is published. With staff changes early in 2012, longer notice publication periods were anticipated. Ms. Hutt noted that the significant efforts of Ms. Rasile and Ms. O'Brien allowed for a very seamless transition with few delays. Ms. O'Brien stated that when she started in January 2012, she had a notice work log of 30 notices, and publication took an average of six to eight weeks. Currently, she has a notice work log of seven notices, with an average publication time of three weeks. Ms. Hutt stated it was difficult to provide an estimation of the notice publication timeframe, as many parts of the process are case dependent, where both notice length and quality can vary greatly. As part of the process, Ms. O'Brien verifies the information in notices to identify when Federal agencies are potentially affected and need to be included in the process, which can also lengthen the process. Ms. O'Brien has worked to institute new procedures to improve the process and decrease publication times. Ms. Hutt stated that one of her concerns is to guard Ms. O'Brien against potential burnout, as Ms. O'Brien is on target for record notice publication for the year. Ms. Hutt is exploring options to provide backup for notice publication, in the event that the National NAGPRA Program receives increased numbers of notices. Ms. Worl asked that the National NAGPRA Program consider this issue and try to develop two timelines for the Review Committee consideration at the next meeting. Ms. Hutt agreed. Ms. Worl suggested that Ms. Hutt also consider the concept of Lean Administration.

Repatriation Grant Process – Ms. Worl noted that the group offered good information about the grant process. Ms. Worl stated that the Review Committee has recommended that Congress increase funding for grants and that the documentation grant amounts be increased. Ms. Worl recommended that the reburial subcommittee work with staff to discuss repatriation grants; for example, priority considerations and the allocation of funds. Ms. Atalay asked if there was a guideline or limit for the percent of administrative costs, noting that some of those amounts exceeded 60 percent, as detailed in the group's report. Ms. Hutt stated that the indirect cost limit was 25 percent, and none of the indirect costs will exceed the Federal authority in grants guidance.

Ms. Worl stated that the Review Committee should consider policy issues. Ms. Hutt stated that the current policy is to allow repatriation grants through June of each year, with the remaining funds allocated as documentation/consultation grants. The National NAGPRA Program would appreciate the Review Committee's discussion on whether this policy is appropriate or should be changed; for example by placing a limit on the total for repatriation grants. A second policy that the National NAGPRA Program would like the Review Committee to consider is whether the limit of \$90,000 for documentation/consultation grants is appropriate. Ms. Hutt stated that the National NAGPRA Program recently changed repatriation grants to allow tribes retrieving items from Federal agencies to apply for funds, due to decreased Federal funding; the program would appreciate the Review Committee's input on this new policy. Ms. Worl stated she would defer this issue to the reburial subcommittee. Ms. Worl stated that cultural protocols need to be considered for repatriation grants, within reason.

Kennewick Man – Ms. Worl asked for a legal status update on the Kennewick Man issue. Ms. Jennifer Richman, counsel, U.S. Army Corps of Engineers, stated that the human remains have been housed at the Burke Museum since 1998, and the Corps has no intention of moving those human remains. The 2002 District Court order, as affirmed by the 9th Circuit in 2004, held that NAGPRA does not apply to these remains, that there is not enough information to find that the remains are Native American as defined by the law. The court went on to say that the Corps needed to provide access to the human remains to the plaintiff scientists subject to reasonable terms and conditions, which has been done pursuant to the curation regulations at 36 C.F.R. Part 79. The plaintiff studies took place between 2004 and February 2006. Since that time, Dr. Doug Owsley, who has led the efforts on behalf of the plaintiffs and his team, has been editing a volume for publication. As Ms. Cook indicated earlier, the Corps has received fairly minimal information about the substance of that information, although recently Corps staff members were able to look at some of the draft manuscript. Publication is anticipated to be in approximately a year. The Corps has received some, but not all, of the notes and photographs that the different scientists have produced in the course of the study, and those are in the associated records at the Burke Museum as part of the collection. Any other requests

will be reviewed pursuant to the curation regulations.

Ms. Atalay asked if the Corps planned to provide regular updates to the Columbia Plateau Inter-Tribal Repatriation Group. Ms. Richman stated that the Corps meets with the group upon request. Ms. Worl asked about the statement made by Ms. Richman about moving the remains. Ms. Richman stated that there had been some discussion that the Corps planned to move the human remains to the Smithsonian or another institution, and explained that the Corps intends to keep the human remains in the state of Washington. Ms. Worl asked if the court decision would allow for the return of the human remains if the Corps or the scientists so agreed. Ms. Richman stated that if new information came to light or the law changes, the Corps would consider that information in terms whether or not NAGPRA applies at a particular time. Ms. Atalay asked for clarification of reasonable access and the possibility of destructive analysis. Ms. Richman stated that permission for access would be given by the Corps following an administrative process and curation regulations. The only destructive testing allowed by the Corps were on samples from 1999 and 2000, initially gathered to support the Government's initial finding of cultural affiliation and Native American during the litigation. All other requests for destructive testing were denied. Those samples are located at the Burke Museum. Ms. Worl offered a personal statement, that in her lands ancient human remains were discovered, an ancestor who is 9,000 years old or more. The groups worked collaboratively with the Federal agencies and tribes, which was good for both the tribe and also for science. Ms. Worl stated that, in this instance, she was hopeful that at some point in time the issue would be resolved based on tribal beliefs and also on a basic human rights issue.

Ms. Worl stated the group also raised the issue of access to the scientific findings. Ms. Atalay stated she feels it is in everyone's best interest that all scientific information is shared broadly with the public. Mr. Barker stated he thought the group's concern was in limiting access by scientists to the human remains rather than the concern that access was not being granted to the results of research. Ms. Cook stated that the group's concern was that there has been too much access and that there have been enough studies done. The group would like all information available to future researchers so that the ancestor does not have to be disturbed anymore. The group feels that the information generated from the studies should be readily available, and thus far, it has been limited.

National NAGPRA Training – Ms. Worl stated that the Review Committee supports continued training. Mr. Barker stated that the group also recommended that the trainings should occur in areas that are accessible to the tribes

Presentation: The Role of the National Archives and Records Administration (NARA) in Preserving and Making Accessible NAGPRA Records

Presentation

Mr. Jason Lautenbacher, (appearing by Microsoft Live Meeting, from Washington, DC) National Records Officer, National Park Service, thanked Ms. Hutt for the invitation to address the Review Committee. The National Archives has partnered with the National NAGPRA Program to house inactive and legacy NAGPRA records.

Mr. Lautenbacher reviewed relevant definitions:

- Federal Records – Identified as any recorded information, created or received, documenting activities of all Federal Government employees
- Electronic Information – Identified as any record in a digital format, accessed via a machine, such as a computer
- Inactive Records (legal ownership retained by NPS) – Includes paper records less than 15 years old and electronic records between the ages of 1 and 3 years
- Legacy Records (legal ownership transferred to National Archives) – Includes paper records more than 15 years old and electronic records at 3 years old

Mr. Lautenbacher stated that the NPS follows Director's Order #11D and the Servicewide Records Schedule (SRS). Director's Order #11D modernizes traditional recordkeeping requirements to ensure records, in digital formats, are identified, managed, and protected just as vigorously as Information Resources in traditional formats, such as paper. The Servicewide Records Schedule is the legal agreement between the NPS and the National Archives, which determines which agency records are permanent and temporary, and this is signed by the Archivist of the United States and the National Records Officer, NPS. Mr. Lautenbacher showed examples of these documents. Under the

SRS, all mission related records created by the NAGPRA staff are permanent, as these records document and are related to the reporting of human remains and funerary objects. The National NAGPRA Program has been determined to be the most important program in the NPS because of its mission related functions. The SRS defines legacy records as paper records that are 15 years old and electronic records that are 3 years old. Records should be legally transferred to the National Archives upon becoming a legacy record.

With permission of the National NAGPRA Program Manager, the National Records Officer, when appropriate, will transfer legal ownership of the records to the National Archives at College Park. Legal transference is a legal document, outlining public access restrictions, signed by the National Records Officer and the appropriate National Archives official. Legal and physical transference ensures records are never destroyed or damaged and are available to the public forever, and assigns legal responsibilities, such as FOIA requests and future litigations, to the National Archives. Legal transference is mandated by law to ensure that the priceless story of NAGPRA is told and available to the public.

Mr. Lautenbacher stated that this project is now necessary due, in large part, to the critical space problem in Washington, DC. The National NAGPRA Program and the National Archives wanted to ensure that the NAGPRA records are protected, while also taking budgetary and space restrictions into consideration. To that end, many agencies send inactive records to the Washington National Record Center in Suitland, Maryland. As NAGPRA records go to the Suitland facility, NAGPRA staff will have access to the records, and digital records will be protected from electronic obsolescence. Mr. Lautenbacher stated that at a meeting was held between the National NAGPRA Program Manager, the NPS National Records Officer, DOI Office of the Solicitor, and National Archives General Counsel and FOIA Officer, and the following occurred:

- The legal authorities for possible redactions were defined
- No significant privacy or FOIA issues were identified
- Inactive paper records are to be sent to the Washington National Records Center at Suitland, MD, annually
- Inactive electronic records are to be sent to the National Archives at College Park for permanent storage, annually

The Washington National Records Center (WNRC) is the facility dedicated to all inactive records; this includes all inactive paper records less than 15 years old. In May 2012, the records that will go to the WNRC will be all Review Committee records from 1992 to 2010 and all grant files from 1994 to 2006. Mr. Lautenbacher stated that this was a large amount of records (over 140 boxes) that took a significant effort to assemble. Although the records will be available to the NAGPRA staff, these records will not be made available to the public until they hit the 15-year mark.

The National Archives at College Park is the actual archives of the United States, and is the facility dedicated to legacy records. When records move to the National Archives at College Park, legal custody of the records is transferred to the National Archives with the mission to make the records publically available. This includes all inactive paper records more than 15 years old and all inactive electronic records when 3 years old. In May 2012, the records transferred to the National Archives will include the electronic transcripts of the Review Committee from 1992 to 2010.

Review Committee Questions and Discussion

Ms. Worl stated she recalled an instance, at a past Review Committee meeting, where a tribal member shared cultural information, in violation of cultural tradition, in order for the Review Committee to have that information and be able to make a decision. Ms. Worl asked how that situation would be handled. Ms. Hutt stated that information coming before the Review Committee is public record. Notices published for Review Committee meetings or for comment on regulations or consultation meetings contain a caveat explaining that any information provided will be part of the public record. Ms. Hutt stated that the redaction issue has not yet been resolved with regard to inventories and summaries, which have not yet been transferred.

Ms. Mattix stated that, under FACA, all of the Review Committee's meetings are open and public and any of the materials produced are available to the public. That's a statutory requirement. There are no FOIA-like exemption provisions to protect information that has been made public at one of these meetings. A procedure exists to close Review Committee meetings if sensitive information will be shared, but that process needs to be approved by the DOI in advance. Ms. Worl asked if the materials will have any use restrictions. Ms. Mattix stated that, in general, materials made available to the public under FOIA or that are housed at the National Archives do not have any

restrictions regarding use. However, if material is under a copyright, any party requesting that information would have to comply with copyright laws. Ms. Worl stated that additional effort needs to be made to ensure tribes have full knowledge regarding this issue, and she would like to note this as an issue that warrants further Review Committee attention.

Presentation: Coconino National Forest/Hopi Tribe Repatriation Project – A Status Report

Presentation

Mr. Peter Pilles, Coconino National Forest Archeologist, stated he was responsible for coordinating and assisting the efforts of the many institutions and people who are working on this project. Mr. Pilles introduced the individuals present at the meeting: Ms. Anna Berg, NAGPRA Coordinator for the Museum of Northern Arizona; Ms. Arleyn Simon, NAGPRA Coordinator for Arizona State University; Ms. Kimberly Spurr, Museum of Northern Arizona, Bio-anthropologist for the project; and Mr. Leigh Kuwanwisiwma, Director of the Hopi Cultural Preservation Office. Mr. Pilles stated that two of the four reburials scheduled for this project have been completed. They wanted to share the challenges faced and lessons learned so far to benefit others who are just beginning their own NAGPRA projects.

To deal with such a large project, a team of over 70 archeologists, curatorial staff, administrators, bio-anthropologists, and tribal consultants were assembled to prepare these human remains for repatriation to the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation. The Museum of Northern Arizona was the lead institution, due to its experience with the forest, location, qualified staff, and proper curatorial facilities. Coconino National Forest has had a positive, long-term relationship with both the Museum of Northern Arizona and the Hopi Tribe of Arizona. Mr. Pilles stated he has a long history working with the museum and the Hopi Tribe of Arizona. The Hopi Tribe delegated signatory authority to Mr. Leigh Kuwanwisiwma, as Director of the Hopi Cultural Preservation Office, to make decisions on cultural matters on behalf of the Hopi Tribe. This has greatly reduced and facilitated the consultation time that would otherwise have been needed to make the many and varied decisions related to this project.

Mr. Pilles stated that a number of challenges quickly became apparent: verification of land status at the time the sites were excavated was needed to confirm which sites were on National Forest land; coordination for the return of collections in various institutions in time to coincide with the scheduled reburial dates; finding locations for reburial that could be adequately monitored and assured of permanent protection from future disturbance; and ensuring that documentation of human remains and artifacts meet current standards and is accurate and consistent between the various institutions. A number of meetings were held with the Hopi Tribe and Zuni Tribe to discuss these issues and reach agreement on the level of analysis and types of documentation for human remains and artifacts that were acceptable to them. Another challenge was how to deal with collections that were illegally excavated years ago that are now located in museum collections. Documentation of these collections is variable and determining which items are NAGPRA items and whether or not they came from forest lands is an ongoing challenge.

Mr. Pilles stated that, from an archeological perspective, they have learned much by having the opportunity to have an updated review of the artifacts and burials that have been excavated from the Coconino National Forest for over one hundred years. Individual site differences were noted between artifacts, age and sex groups in burial patterns and associated artifact distributions. These will provide new insights into understanding relationships within and outside the culture area in the future.

As project coordinator, Mr. Pilles stated it was difficult to find the time needed for this project, in addition to his other responsibilities. A NAGPRA project needs archeologists with expertise in the local ceramics and artifact types, burial patterns, and the region in order to make learned, justifiable decisions about what artifacts are and are not NAGPRA items and to confirm the adequacy of documentation provided by the institutions. Knowledge about the history of archeological work in the area is also needed to help agencies and tribes identify NAGPRA collections that they and institutions may not know they have. For this project, existing institutional records and inventories were found to be inaccurate. Estimates of the number of individuals were significantly reduced, once the human remains were examined in a consistent manner by an experienced bio-anthropologist. However, additional remains and UFOs continue to be discovered, despite the best efforts of agencies and institutions to minimize this. Collections from institutions must be assembled with sufficient advanced time to check identifications and redo documentation and photography, if necessary. Coordination is needed between key players regarding the inventory

process, burial relocation site selection, and logistics to bring everyone and everything together at the right time. Mr. Pilles stated that this was not just a Forest Service project. It is successful only because all parties involved are operating as a team.

Ms. Anna Berg, NAGPRA Collection Specialist, Museum of Northern Arizona, summarized the repatriation project, and the challenges faced and lessons learned, on behalf of the Museum of Northern Arizona. Due to the large amount of materials and level of documentation needed, a team was assembled to prepare the materials for repatriation. The team included Ms. Berg, as NAGPRA Collection Specialist, to manage day-to-day coordination of the project at MNA and maintain physical and intellectual control of all repatriation materials throughout the process. In addition, Ms. Berg wrote a procedures manual to guide this process, ensure consistency, and provide an explanation/model for people in the future to understand the museum's methods. The Records Specialist verifies the land status of sites with NAGPRA materials, provides the team with a complete list of sites for the reburial, and gathers all relevant information about burials. Ms. Kim Spurr, Bio-archeologist, documents the human remains and checks faunal collections for human remains. Two collections assistants document the funerary objects and process the bulk materials to check for previously undocumented burial items and human remains. Mr. Pilles, Forest Archeologist, advises the team on the project, makes decisions about funerary objects, and provides expertise due to his past archeological work in the region, his knowledge of sites and MNA records, and his long-standing relationship with MNA and the Hopi Tribe. The collections manager provides oversight, and the registrar handles the deaccession process.

Ms. Berg summarized some of the lessons learned during this process. A project coordinator was necessary to coordinate the team's efforts and work plan. In addition, the Museum of Northern Arizona found that if the team worked in tandem on the same site at the same time, issues could be addressed more easily, which saved time and prevented duplication of work.

Ms. Berg summarized several challenges faced by the Museum of Northern Arizona:

- The discovery that the human remains and undocumented funerary objects were mingled with non-burial items, requiring that materials be resorted. In addition, as Mr. Pilles mentioned earlier, a discrepancy was noted in the total number of individuals affected by this repatriation at MNA. After reassessing this information, the Museum of Northern Arizona anticipates that the total number of individuals will decrease by 30 percent.
- The limitation of existing Museum of Northern Arizona site records. Excavations dated back to the 1930s, and field documentation over time was inconsistent at best. Sorting through all of this archival material for information on land status, funerary objects and burials has been an adventure and proved critical to completing this project.
- Potential funerary objects found in bulk storage. Protocols needed to be established to determine AFO status, which required interpreting loose definitions of "associated with" because many of the sites' burials were located in trash mounds. Identifying which objects were trash and which were associated with the individual was a challenge. Often, all material excavated from the burial pit was marked as "associated with burial," even though only a portion of the materials were actually placed with the individual as burial items. Mr. Pilles focused on interpreting these different contexts and identifying site-wide patterns, and the criteria he used to identify AFOs was then included in the procedures manual.
- Identifying UFOs in the Museum of Northern Arizona's gift collections. Many of these collections are old, poorly documented, pot-hunted collections. The Museum of Northern Arizona handled these items on a small scale in the first reburial, but developing a protocol for how to deal with these materials is a task that the Museum of Northern Arizona will undertake on a larger scale in the coming years.

Ms. Berg stated that despite all of the challenges this project has been a great opportunity for the Museum of Northern Arizona to improve the quality of records and documentation for these collections. Ms. Berg stated she hoped the Museum of Northern Arizona's experiences would be informative and useful for others with similar projects.

Ms. Arleyn Simon, Arizona State University, summarized Arizona State University's work with a very large archeological collection called the Chavez Pass Collection from the Anderson Mesa area. This site was first excavated in 1896, and those collections reside at the Smithsonian. In the 1970s, Chavez Pass had become the victim of extensive looting with massive amounts of human remains strewn across the surface. In 1976, the Forest

Service took aggressive action to stop the looting and brought in archeologists from ASU and Tempe to help salvage the human remains and properly recover and record burials that had been exposed in numerous looter pits. ASU continued work at the site for six field seasons, and part of that work included site survey of small habitations in the area. Staff is currently documenting human remains, separating the funerary objects from the bulk collections, and delving through six years of field notes to provide context for the collection. The collection is too large to have in any one available space during the documentation process, so the team uses electronic recording with laptops, wireless networks, and files on a common server to bridge and coordinate across teams working in three different buildings. Re-evaluation of the human remains is underway, with dedicated attempts to differentiate unique individuals and reassess the total counts. Ms. Simon stated Arizona State University believes this approach, which the other museums are also using, is more meaningful to the documentation, repatriation and reburial process than the original MNI approach. The final result will be a more realistic and smaller estimation of burial populations than that reported in the original inventory. This is a very challenging project. However, through the support and cooperation of the Coconino National Forest and the Hopi Tribe of Arizona, Arizona State University is able to undertake the project in a fairly timely manner. Ms. Simon stated this project is also providing training opportunities for a new generation of professional anthropologists on the importance of the NAGPRA process and how to conduct documentation with cultural sensitivity awareness. The Arizona State University appreciates being a part of this effort.

Ms. Kimberly Spurr, Bio-anthropologist, Museum of Northern Arizona, summarized the bio-archeological documentation of human remains from the Coconino National Forest currently housed at the Museum of Northern Arizona. The primary goal of the documentation of these human remains is to provide information that will assist the Hopi Tribe of Arizona during the reburial. The information provided to the tribe will include: the age at death of each individual, the biological sex of each individual, the completeness of the remains, and the type of burial; for instance, whether it is a cremation or inhumation, a single interment or multiple, or whether it is isolated human bone. The second goal of this documentation is to gain information that will be useful to the Hopi Tribe and other researchers that shows evidence of genetic relationships among the Prehistoric cultural groups in the area and also between the earlier groups and modern tribal groups.

Ms. Spurr stated that the methods used for this documentation process are standard to bio-archeology, and they are based on procedures that were established after the passage of NAGPRA to ensure consistent documentation across multiple collections and by multiple institutions. There is absolutely no destructive analysis of any human remains. The human remains are not washed or reconstructed in any way, and one of the main emphasis points of this documentation is to always treat the human remains with the respect and care due to the ancestors. The documentation includes an inventory and condition assessment of all human remains, establishing age at death and biological sex for each individual, taking measurements of the skeletal elements to establish age and stature estimations, documenting evidence of pathology, trauma, and morphological features. After consultation with the Hopi Tribe, the documentation does not systematically include photographing human remains, only pathologies or genetic anomalies that are difficult to describe accurately to ensure consistent documentation. Once the human remains are documented, they are rehousing in natural materials and reassociated with their funerary objects in preparation for reburial.

Ms. Spurr stated that the current documentation of collections has shown a 90 percent correspondence with past inventories; however, some irregularities are being found and additional human remains have been identified. In addition, in some cases isolated bones are being associated with known burials. As described by Ms. Berg, Ms. Spurr stated that the total number of MNI can change significantly during this process, either due to identification of human remains from faunal bones or realizing that what was thought to be a single burial is, in fact, a multiple burial. Ms. Spurr stated the museum wants this process to be transparent to reassure the tribes of their genuine efforts.

On behalf of the entire project staff, Ms. Spurr expressed appreciation for the Hopi Tribe's willingness to allow the documentation prior to repatriation. In addition to facilitating appropriate reburial for these ancestors to go back, the Museum of Northern Arizona hopes this information will be helpful to the Hopi Tribe and to other scholars who are seeking to understand how people have migrated around the Southwest through time. Ms. Spurr stated they hope that this presentation has helped the Review Committee understand some of the logistical and hands-on details of this project.

Mr. Leigh Kuwanwisiwma, Hopi Tribe of Arizona, stated that much of the research into these human remains was

brought forward by the Hopi Tribe themselves. The Hopi Tribe was interested in certain types of data, and the resources were locally available. Over time, the Hopi Tribe has formalized the cultural protocols as to how the burials were to be conducted. Mr. Kuwanwisiwma stated many tribes do not have reburial ceremonies, and that challenge was addressed by Hopi Tribe advisors who stepped forward and noted the ethical and moral responsibility to receive and rebury the individuals. Mr. Kuwanwisiwma stated that the tribe has advised institutions about the proper way to handle different human remains. Mr. Kuwanwisiwma stated that the tribe had to make some accessions to tradition in order to accommodate the large reburials; for example, usually family members would dig the area the day of the reburial but that was not possible due to the size and nature of the reburials. The tribe decided to allow preparation of the site ahead of time, in order to accomplish reburials in one day, which was a priority of the tribe. Other cultural protocols are observed, such as the handling of human remains only by males and ceremonial practitioners' observance of restricted contact with infants and children for a set period after a reburial ceremony. In 1994, on the advice of religious and traditional leaders, the Hopi Tribe delegated full authority under tribal law to Mr. Kuwanwisiwma to negotiate and enter into all agreements on behalf of the Hopi Tribe. This helps facilitate and streamline the decision-making process.

Mr. Kuwanwisiwma stated the Hopi Tribe has several more reburials scheduled with the Coconino National Forest, with the project concluding in 2014. This is the single largest collection of human remains nationally in which the Hopi Tribe is involved, with approximately 3,000 total human remains and 5,000 funerary objects. In addition, the Hopi Tribe has helped with repatriations of other big collections in Chaco Canyon, Mesa Verde, and Dolores, Colorado. The Hopi Tribe is currently working with the BIA and the White Mountain Apache Tribe to repatriate approximately 1,400 sets of human remains on the White River Reservation.

Review Committee Questions and Discussion

Ms. Atalay thanked the parties for their presentation and the positive procedures they have developed, which could be useful examples for other institutions and Federal agencies. Ms. Atalay asked if the procedures and protocols would be publically available. Ms. Berg stated that was the goal of the Museum of Northern Arizona, although they do not have a specific plan in place. Mr. Pilles stated that would be part of the forest's process as well.

Ms. Atalay asked for a description of what percentage of the MNI were found on the surface from looting compared to those that were part of the excavations. Ms. Simon stated that the majority, 60 percent or more, were collected from the surface and from excavating exposed burials in the looter pits.

Ms. Atalay asked if the Coconino National Forest has developed a process for working with repositories that may have collections. Mr. Pilles stated that has been one of the functions of Mr. Frank Wozniak, the Regional Coordinator for the Southwestern Region of the Forest Service. Mr. Wozniak has made initial contact with institutions based on information provided by different forests to help identify collections. The next stage will be to contact the institutions, with the assistance of the Hopi Tribe.

Mr. Wright, Jr., thanked the parties for sharing their experience, and stated that he hoped other museums and Federal agencies can see what the forest has accomplished in collaboration with the tribe. Mr. Wright, Jr., stated that the parties need to engage in discussion and consultation under mutual respect. However, sometimes there is no cooperation or success. Mr. Wright, Jr., thanked the parties for the respect they have shown to the tribes in Arizona.

Presentation: National NAGPRA Training – A Research Study

Presentation

Ms. Kimberly Spurr, Museum of Northern Arizona, summarized the museum's cooperative agreement with the National Park Service for production of the National NAGPRA Program's annual report for 2012. The National NAGPRA Program produces mid-year and annual reports that are posted on the website and distributed to interested parties. These reports contain information on decisions of the NAGPRA Review Committee, progress of NAGPRA compliance by museums and Federal agencies, status of tribal repatriation efforts, and updates on national issues related to NAGPRA. The Museum of Northern Arizona has signed a cooperative agreement, with the NPS Washington office, to assist in production of the 2012 annual report. The museum will draft and format the 2012 report with input and assistance from the National NAGPRA staff. The report will be similar to previous versions in organization and content, but will be more descriptive and illustrative. The museum will uphold the scholarly neutral

and unbiased data presentation established by previous National NAGPRA annual reports.

Ms. Spurr stated that as part of the cooperative agreement, and with funding from the National Park Service, the museum is also conducting a focused study that will be presented in the 2012 annual report. This study will consist of a comprehensive summary and interpretation of the National NAGPRA training evaluations, a report that was requested by the Review Committee recently. Each year, National NAGPRA coordinates and sponsors a variety of training programs. The longest running of these is the NAGPRA Basics Training. This one-day course is designed to familiarize people involved in NAGPRA compliance programs with the legislation and its implementation. National NAGPRA has provided the museum with basics course evaluations for 15 training sessions dating back to 2005. A detailed study of the evaluations and comments provided by the participants will allow a critical review of the program that can be used to improve curriculum and ensure that the course remain useful and relevant. Other training programs for which the museum has evaluations are the two-day symposium *NAGPRA at 20* held in 2010 and three courses that are offered in partnership with the National Preservation Institute. The museum intends to input the quantitative and scaled evaluation data, first into a database and then into a statistics program, to identify and characterize trends and patterns in this evaluation data. Targeted inclusion of written comments and suggestions from course participants will offer the course organizers and instructors specific information that can improve the curriculum and ensure that it remains fully relevant. Ms. Spurr stated that staff at the museum is excited about this collaboration with the National NAGPRA Program, and look forward to getting feedback from the users of the annual report on the new format. The museum would welcome any comments from the Review Committee on specific topics that they would like included.

Review Committee Questions and Discussion

Mr. Wright, Jr., stated that the basic training is good and does present a general overview. One issue that needs to be described through the trainings is the fact that burial collections, including human remains, are considered cultural items, which allows for them to be treated as property. They are then described with terms like “control” and “possession.” Mr. Wright, Jr., stated that it would be important to note if those types of comments are portrayed in the evaluations.

Ms. Hutt stated that the Review Committee had requested a study of training, and staff felt it would be better if it was done outside of the program, rather than inside, to preserve integrity. Ms. Spurr will make requests for content, demographics, and the evaluations, and the National NAGPRA Program staff will provide the information.

Ms. Worl asked about the contract process. Ms. Hutt stated that the NPS has an accounting office in Denver, which is responsible for the process of putting contracts out for bid and then choosing the contracting institution.

Presentation: Peabody Museum of Archaeology and Ethnology, Harvard University

Presentation

Ms. Patricia Capone, Associate Curator and Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, was accompanied by Ms. Emily Pierce, Curatorial Assistant, and Ms. Diana Loren, Associate Curator. Ms. Capone thanked the Review Committee for the opportunity to present an update on NAGPRA implementation. The Peabody Museum has committed significant resources, expertise and attention over many years in a good faith effort to implement NAGPRA and to cultivate the respectful relationships necessary to this effort. The Peabody Museum has partnered with Native American communities and other institutions across the United States to work toward successfully achieving its mutual goals of education and research.

The Peabody Museum is responsible for NAGPRA implementation for one of the largest and broadest collections subject to the Act, and consults on human remains and funerary objects from nearly every state. The Peabody Museum has completed requirements to enable repatriation of approximately 3,137 individual human remains and over 10,000 funerary objects. This represents approximately 13 percent of the total number of human remains and funerary objects that are available for repatriation nationally. Of these culturally affiliated collections, physical repatriation has been completed for the following: 2,934 individual human remains, 3,886 funerary objects, 1 sacred object, 73 objects of cultural patrimony, and 18 objects that are both sacred objects and objects of cultural patrimony.

Consultations with Native American tribes take several forms; visits to the museum, correspondence, web consultation through the museum collections database online, and arrangements for physical repatriations. The Peabody Museum continues to utilize its collections website, with 37 web lists, as a means of presenting collections for NAGPRA consultation. Since the last Review Committee meeting in November, the Peabody welcomed or traveled to four different NAGPRA consultation visits. Physical repatriation events continued during the past year, with another one scheduled for June 2012. Since the last meeting, one new *Federal Register* notice was published, which enabled the repatriation of two individual human remains.

Ms. Capone stated that, regarding the discussion of repositories and Federal agency collections, the total number of human remains at the Peabody Museum that relate to Federal agencies is approximately 360 individuals, and all but about 175 have been inventoried and acknowledged control over. Approximately 150 individuals have been published in *Federal Register* notices, and all but 36 of those individuals have been physically repatriated.

The Peabody Museum began implementing new NAGPRA regulations for Section 10.11, the final rule, disposition of culturally unidentifiable human remains, which became effective in 2010. The Peabody Museum allocated resources for new staff to join the museum toward implementing NAGPRA in partial response to these added requirements. In Fiscal Year 2010, the Peabody Museum initiated consultations upon request with six tribes under the new regulations, and since last July this number has almost tripled. The Peabody Museum received a two-year NAGPRA consultation grant to implement the new regulations for culturally unidentifiable human remains from Eastern Massachusetts, and has applied for another consultation grant for Fiscal Year 2012 for another area.

The Peabody Museum continues to be concerned about several aspects of the regulation for 10.11. There are poorly defined and limited to the discussions that must take place and the parties who must take place in the discussions. The cost of conducting these large-scale and open-ended discussions is not yet clear but has potential to be great. The Peabody Museum believes the time for implementing this process has been underestimated. All of the factors described above are likely to contribute to an atmosphere of delay and expense for tribes and institutions. It is important that a process be well structured and well defined, and the Peabody Museum would advocate for increases in the NAGPRA grants program and the grants program administration. Those increases are warranted to support the additional requirements of this new regulation. The Peabody Museum hopes their current and past NAGPRA efforts will be taken into consideration and will have a full opportunity to comment and participate in any review.

Regarding the March 2, 2012, *Federal Register* notice relating to NAGPRA's information collection, the activities referenced in this notice do not capture even a small percentage of the Peabody Museum's compliance activities. The time estimates and staff costs presented in this table are not representative of the information collection costs to museums. Ms. Capone stated that, in their view, the time and effort required for information collection requires substantially greater resources than the estimate in the *Federal Register*. In addition, the Peabody Museum feels that reckoning the cost of NAGPRA implementation should be conceived of more broadly. Consultation, curation agreement for collections prior to repatriation, and physical repatriations are several of the important NAGPRA activities, which require considerable resources and are not represented by information collection.

The Peabody Museum continues to refine policies and procedures for sensitive collections and to strive for improved approaches to expanding accessibility to Native American communities, whether through NAGPRA or other means. Ms. Capone stated that those at the Peabody Museum are grateful for the relationships they have developed that so broadly benefited the museum and look forward to new ways of understanding through the NAGPRA process. Ms. Capone stated she would be happy to provide an electronic copy of her presentation.

Review Committee Questions and Discussion

Mr. Barker asked for clarification of the extent to which the March 2, 2012, *Federal Register* notice did not capture the time necessary to fully implement NAGPRA. Ms. Capone stated that there were two pieces to this issue. One is the idea of information collection as a representative notion of understanding the work involved in NAGPRA and all the attention the various stages deserve; information collection is a small piece of that. The second aspect of the notice is whether or not the estimates for information collection itself seemed accurate, and in the museum's opinion there is considerably more time involved in information collection. Ms. Worl stated that the Review Committee appreciates the Peabody Museum's regular and ongoing updates.

Action Item: Discussion and Review of the Review Committee's Dispute Procedures and Findings Procedures

Ms. Atalay, who serves as Chair of the subcommittee, served as Chair during the following discussion. Ms. Atalay stated that the subcommittee, consisting of Ms. Worl, Mr. Hemenway, and Ms. Atalay, has been working to consider and revise the Review Committee's Dispute Procedures and Findings Procedures, with the goal to clarify the procedures, simplify the language, and provide a clear and fair process.

Mr. Hemenway stated that the subcommittee wanted to simplify the process as much as possible and bring recognition that the dispute process can be, at times, a very contentious, tension-filled event that can continue for many years. The goal is to develop procedures that may help alleviate some of the tension and, hopefully, have some issues resolved without having to come before the Review Committee. Mr. Hemenway summarized several proposed changes to the procedures:

- Provide an opportunity for the parties to meet for conversations prior to coming before the Review Committee, with the hope that conversations will help alleviate tension and encourage communication. This may help resolve situations before they are elevated to the level of a dispute.
- Eliminate Form B, "Request by a Disputing Party That the Review Committee Convene Parties and Facilitate a Dispute Related to the Return of Cultural Items." The form created confusion for both the parties prior to the meeting and for the Review Committee when working through the questions that were to be answered at the meeting during the dispute process.
- Additional clarification for requests of Finding of Fact.

Ms. Hutt stated that the forms for making requests for findings of fact and for disputes would absolutely be removed from the website at the request of the Review Committee. Ms. Hutt wanted to clarify that those were created in response to the Review Committee's desire that requests be consistent and a "checklist" be provided to ensure that the parties submitted sufficient and correct information for consideration.

Mr. Wright, Jr., stated that it would be helpful to have a list of what criteria would constitute a dispute. In his experience, the disputes before the Review Committee centered around right of possession. Ms. Hutt stated that the National NAGPRA Program receives a lot of inquiries regarding whether parties actually have a dispute or whether a situation is less adversarial. Ms. Hutt stated that staff and counsel could produce a list that could describe situations that would constitute a dispute or a finding of fact.

Ms. Worl stated that many tribes and museums are familiar with the basic questions: are we a federally recognized tribe, do we have a right to bring a dispute. Disputes may focus around the definition of objects: whether an object is a sacred object or not, whether an object is cultural patrimony or not, have the standards been met to fit the definition of cultural patrimony, has a case been made for right of possession. Ms. Worl stated that previously the Review Committee was trying to go back to the law itself and ensure that parties were coming to the Review Committee with all necessary information. Perhaps in trying to simplify the process and gather information, the process was actually made more complex with the use of forms and questions. The subcommittee wanted to return to the earlier process with a structure outlining: are we a tribe, do we have cultural affiliation, is it a sacred object, is it an object of cultural patrimony, have we met the right of possession, and is this a competing claim?

Ms. Mattix stated that she has been with the Review Committee since 1996, and the dispute process has evolved over time. Ms. Mattix stated that when she first started, everything was just called a dispute, generally, with no real distinction between the (c)(3) and (c)(4) categories in the statute. Section (c)(3) deals with findings and recommendations and Section (c)(4) talks about the responsibility to facilitate disputes. An effort was made to focus on the (c)(3) provision for issues where parties just needed some additional assistance with factual findings, so they could bring that before the Review Committee without labeling it as a dispute. Perhaps the process has now been too formulated.

Mr. Barker suggested that the subcommittee's draft be made available to parties to previous disputes to see whether or not these revisions would have helped those processes, since they have first-hand experience over them. Mr. Barker stated that the goal of the Review Committee is not to resolve disputes, but to not have disputes occur in the first place. One of the recommendations mentioned in the discussion was the importance of consultation with the

DFO and the Chair of the Committee in order to resolve issues before they come to the Review Committee as a dispute. Mr. Barker asked if information was captured, as to the number of potential disputes that were resolved prior to coming to the Review Committee through discussions with the National NAGPRA Program. Ms. Hutt stated that providing technical advice and resolving issues that could lead to disputes is the most satisfying part of what she does. Ms. Hutt stated that the National NAGPRA Program does not act as a mediator, provide legal advice or invade the Review Committee's role. The National NAGPRA Program does not capture information regarding those cases, due to the sensitive nature of the issues. The National NAGPRA Program does as much as possible within its position in the law.

Ms. Hutt stated that if the Chair, DFO and parties participated in predecisional, predispute negotiation or mediation, and an issue was brought to the Review Committee as a dispute, a question may arise about the Chair then recusing themselves. Ms. Hutt stated she would caution against involving the Chair in matters that may potentially come before the Review Committee, in order to maintain distance and dispassionate neutrality. Mr. Barker stated that the proposed procedures include that type of discussion in concert with the DFO and the Chair of the Committee. Ms. Hutt stated she was concerned about the potential conflict of interest. Ms. Hutt explained that under the prior dispute procedures, the DFO consults with the Chair to determine administratively if a matter will be heard by the Review Committee, but this is not a substantive discussion regarding the facts of the issue, as that could compromise the neutral nature of the dispute process.

The Review Committee discussed the process to update the subcommittee's report, in time to distribute it to the Review Committee and post it on the National NAGPRA Program website for the review prior to the meeting.

Review Committee Motion

Ms. Worl made a motion to proceed with a four-step process: the Review Committee will review and comment on the draft proposal; the subcommittee will update the draft and forward that to the DFO and counsel; the DFO and counsel will offer comments and send it back to the subcommittee; and the subcommittee will update it and make it available for distribution by October 19, 2012. Ms. Farm seconded the motion. The motion passed by unanimous vote.

Presentation: Caring for an Archeological Legacy: 36 C.F.R. 79 and the Curation of Federal Collections

Presentation

Mr. David Gadsby, Archeology Program of the National Park Service, stated he would like to describe the proposed change to 36 C.F.R. 79. The Federal Government cares for a number of heritage collections, under a number of authorities, including NEPA and NHPA. Many of these collections are in Federal repositories, although some are in non-Federal repositories. 36 C.F.R. 79 is the regulation that specifically addresses the curation of archeological collections, with a goal of ensuring long-term management and preservation of archeology collections. 36 C.F.R. 79 falls under several authorities, including ARPA, the Antiquities Act, Reservoir Salvage Act, and NHPA, and it requires Federal Government fiscal responsibility and specifies that agencies are responsible for the long-term costs of curation. The rule applies specifically to collections, objects collected under its various authorities, and the records associated with that, and the rule requires that the repositories that store collections have the long-term capacity to do so. It covers the management and preservation of collections and provides methods to secure and fund services, guidance to Federal agencies on how to select a repository, access to and use of collections, and inspections and inventory.

Currently what is not contained in 36 C.F.R. 79 is a mechanism by which Federal agencies may dispose of objects that are not of "sufficient archeological interest." Although that piece of the regulation was initially proposed in 1990, it was dropped for a variety of reasons after the public comment period. However, there are renewed pressures to deaccession for a couple of reasons, especially due to the space crisis.

Mr. Gadsby described the guiding principles for going forth with deaccessioning. One is to preserve the integrity of collections so there is no loss of value. Deaccessions must be justified, which is done in consultation with subject matter experts and tribes. The process must be deliberate, ethical, rigorous and open, with checks and balances.

Deaccessioning must be consistent with all Federal laws and policies, including NAGPRA. NAGPRA is specifically mentioned, as objects that qualify under NAGPRA cannot be deaccessioned under this new rule.

The rule would allow the deaccessioning of object of “insufficient archeological interest,” and is limited only to those that the Government controls. “Insufficient archeological interest” means objects that lack archeological provenience, lack physical integrity, and are determined by qualified archeologists to be overly redundant and not useful for research. This can include objects from historic collections, as well as prehistoric collections. The process could include objects where provenience information has been destroyed, old collections that have suffered the ravages of time; soil samples that have been damaged through decay or decomposition; nails and brick fragments that have been collected as under the archeological impulse to collect, but serve no specific research purpose.

A sample of the deaccessioned objects, as determined by the technical experts that are consulted, is retained with proper documentation. The rest can be deaccessioned. Once deaccessioned, the objects are offered to tribes, other Federal agencies, scientific institutions, or other institutions for public benefit. If no one is willing to take them, they can be destroyed, and the Federal agency official has to be present and witness the destruction. The procedure is designed to be flexible but the Federal agency official and his committee consultants have to have written procedures by which they proceed. Finally, there is an appeal procedure that can be made to the Departmental Consulting Archeologist on decisions made by a Federal agency official.

Mr. Gadsby stated that they are working on final language for this proposed rule, which will be circulated to tribal leaders, as well as the Review Committee, for comment.

Review Committee Questions and Discussion

Mr. Barker asked if materials are being considered for deaccessioning, first, who is proposing the deaccession, and second, how is it announced. Mr. Gadsby stated that the Federal agency official, the person with direct management authority over the collection, is the one who proposes the deaccessioning. They do some notification and consultation prior to the actual deaccessioning with tribes, if any are affected, with experts within the agency, and if necessary Federal experts outside the agency. Once the determination has been made and the course of action has been determined, the determination is published in the *Federal Register*.

Ms. Atalay asked if there have been requests or concerns coming forward about potential interest in this rule.

Mr. Gadsby stated that while he is relatively new to this project, there has been wide interest in this in the curation community.

Public Comment – May 10, 2012

Mr. Shane Anton/Ms. Angela Garcia-Lewis

Mr. Shane Anton, Salt River Pima-Maricopa Indian Community (SRPMIC), stated that the SRPMIC is located in Central Arizona. The SRPMIC consists of a confederation of O’odham and Piipaash tribes, which are two different and distinct cultures with unique histories and languages. The SRPMIC and the Gila River Indian Community of the Four Southern Tribes of Arizona claim aboriginal title to 3.8 million acres of South-Central Arizona, as adjudicated in 1970 by the U.S. Indian Claims Commission. The Four Southern Tribes of Arizona currently use the combined adjudicated land claims area of the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Ak-Chin Indian Community, and the Tohono O’odham Nation as the basis for consultation. This land area is vast and includes all land jurisdictions — tribal, state, Federal and private — which makes implementation difficult in some cases. The SRPMIC conducts consultation and consensus with the Four Southern Tribes of Arizona, which include Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Ak-Chin Indian Community, and the Tohono O’odham Nation. The Four Southern Tribes have a relationship of shared group identity that can be traced historically and prehistorically between the Four Southern Tribes of Arizona and the people that inhabited Southern Arizona and the northern region of present-day Mexico, from the time when the first people walked these lands and time immemorial. The SRPMIC acknowledges the great importance of NAGPRA and are very grateful for the opportunity to come forth today to make these comments in the hopes of bringing a sense of understanding, cooperation, respect and dignity for all people and entities involved in this process.

Regarding consultation, Federal agencies have been approaching consultation, comprehensive agreements and plans

of action from a multi-tribal approach, which the SRPMIC considers unacceptable for several reasons. The SRPMIC has participated in consultations with different agencies where they requested individual meetings which included only the Four Southern Tribes based on shared group identity. Several agencies have refused this request based on internal restrictions that state that all meetings must be joint tribal meetings because of funding restrictions. Federal agencies and museums need to educate staff that the NAGPRA process, although a Federal law with a specific process, deals with deep spiritual and religious beliefs that are very important and sensitive to the tribes. In addition, Federal agencies need to be more cognizant of the confidential nature of the meetings. The SRPMIC has had problems with sacred cultural information being shared inappropriately or appropriated by other parties and used without permission or foreknowledge.

In some instances, multi-tribal consultation is inappropriate due to differing cultural beliefs between tribes. Federal agencies may not recognize that multi-tribal consultation is not always appropriate due to different cultural beliefs, even among tribes that claim cultural affiliation to the same archeological material culture. When tribes are unable to agree, the consultation, repatriation and reburial process stalls because the agency officials are afraid to offend one tribe or the other. The SRPMIC and the Four Southern Tribes are often left out of NAGPRA consultations. Many agency officials consult only with those tribes that are close to their facilities and with whom they have a close relationship, rather than by following a transparent process of consultation. There must be reciprocity in terms of communication with tribal groups. When tribes request information on any NAGPRA process, agencies should be required to respond in a timely manner.

When establishing cultural affiliation, the SRPMIC is concerned that the preponderance of evidence seems to be subjective to, and at the discretion of, the institution. In some cases, tribes have no trouble establishing cultural affiliation and repatriating collections recovered after 1990 under subsection 10 (3) and (4), while historic collections, sometimes from the very same sites or archeological regions, are difficult to repatriate. Another concern is when institutions refuse to establish cultural affiliation without giving feedback as to what evidence is needed to complete the claim. Institutions are not required to provide a logical and detailed response to explain why they do not accept certain evidence.

The SRPMIC recommends that the National Park Service institute NAGPRA guidance and training for museums and Federal agencies on how to determine cultural affiliation in order to develop a fair and consistent process. The National Park Service could develop a template for the cultural affiliation reports that tribes can use to make claims that are evaluated according to an established protocol.

Ms. Angela Garcia-Lewis, Salt River Pima-Maricopa Indian Community, continued describing the concerns of the SRPMIC. Ms. Garcia-Lewis stated that another concern is that traditional cultural information is generally not given the same evidential weight as the other lines of evidence. Ms. Garcia-Lewis stated that for the SRPMIC, this is difficult because regional archeological and ethnographic information is full of misinformation, due to cultural and religious background differences and language barriers. Safeguards for the tribes should exist to protect them from having to continue to provide more and more cultural information to try to establish preponderance of evidence. In some instances, the SRPMIC is concerned that the consultations are viewed as intelligence gathering. In some cases, an institution or agency will not repatriate unless there is prior precedence that other museums have already repatriated remains from the same discovery area and temporal period as the historic collections they are holding, despite the tribe satisfying the lines of evidence for the preponderance under the law. In other cases, the institution or repository will not repatriate, even if the precedent and preponderance are both satisfied.

Although the tribes do recognize the benefit of the new regulations for repatriation of the truly unidentifiable in museums and agency repositories, the Four Southern Tribes have noted that some entities are denying cultural affiliation without any feedback at all and insisting the tribes repatriate under the new CUI regulations. The tribes are reluctant to do so, because the traditional cultural information is all there and it could be perceived as the tribes admitting that they are not able to affiliate. In addition, the tribes are reluctant to repatriate under the CUI regulations because they are unable to repatriate funerary objects, which is a cultural violation for the Four Southern Tribes. The SRPMIC feels the regulations should require the transfer of control of both human remains and their associated funerary objects to the appropriate Native American groups, since the new rule is not clear regarding the disposition of associated cultural or funerary objects.

From the Four Southern Tribes' perspective, funerary objects represent offerings intended as gifts and spiritual

offerings to the deceased. Tribal members placed the offerings with the deceased relative or fellow community member as a religious practice. This is a vital part of religious and cultural rituals performed at the death on behalf of the deceased and for the living community. The tribes believe these items are the property of the deceased and no one should deprive the dead of his or her tributes from the living. This is supported by legal precedents that states that the living have an obligation to care for the dead. The disruption of a spiritual process by burial disturbance and excavation and then appropriation of funerary objects is a violation of the tribe's religious freedom and endangers the tribal members' health and welfare to an extreme extent. The placement of funerary objects, their protection, and the community's continued respect of those objects gives the living comfort and underscores the fact that at the time of death they will be respected and honored in the same way that all tribal people have honored and protected their ancestors from time immemorial. In that way, tribes can deduce the preference of the deceased in any NAGPRA situation concerning the disposition of their remains and funerary belongings.

Federal agencies have recently begun to see reburial on agency lands as a favorable distinction, as that demonstrates their tribal relationships. As such, Federal agencies have begun to persist in trying to persuade the tribes to establish reburial sites on Federal lands. Agencies need to be reminded to listen to the cultural and religious values of the different tribes instead of imposing the religious ideals of one group on the other tribes. The SRPMIC understands and respects that many tribes believe that previously excavated or recently impacted burials should be reburied as closely as possible to the original burial site, but the SRPMIC and the Four Tribes do not rebury in situ or within archeological sites or on Federal lands. The first reason, of course, is a cultural reason for not doing so, and the tribes cannot explain that further for confidential cultural reasons. The major practical issue is that the Federal Government has different objectives and cannot guarantee protection for burials in perpetuity. The Federal agencies have conflicting land-use mandates that put burials at risk of future disturbance or even possible removal in the future. Ms. Garcia-Lewis stated that they could submit their comments electronically, if the Review Committee would like them.

Ms. Worl stated that would be very helpful, and she would refer the comments on reburial to the reburial subcommittee for its consideration. The discussion regarding cultural affiliation would be appropriate for the NAGPRA staff to consider for training. Ms. Worl noted the comments regarding consultation, which is a concern also mentioned by other tribes. Mr. Wright, Jr., stated the DOI recently issued a new consultation policy and recommended that the tribe use that policy to help guide their consultation efforts with Federal agencies. Mr. Anton stated that the tribes do not believe Federal agencies should be able to use lack of funding as justification for not following NAGPRA. Ms. Garcia-Lewis stated that sometimes the people at the field or park level understand tribal concerns and are willing to move forward on issues, only to be restricted by administrative staff.

Mr. Barker asked for clarification of the tribe's views on reburial on Federal lands, whether it was a concern about the process or a concern about requirements in the grants process. Mr. Anton stated it was strictly a tribal choice due to cultural issues; they are fine with other tribes making their own decisions. Ms. Worl stated she wanted to acknowledge the concern about the repatriation of culturally unidentifiable human remains because of the associated funerary objects not being able to be repatriated at the same time, and that will be an issue that the Review Committee will continue to discuss. Ms. Worl stated that the Review Committee learned a lot throughout this presentation and encouraged them to continue to submit comments to the Review Committee.

Ms. Bridget Ambler

Ms. Bridget Ambler, History Colorado (formerly the Colorado Historical Society), stated she wanted to express her gratitude to the National NAGPRA Grants Program. Ms. Ambler stated they were very fortunate in Colorado to have a state that supports NAGPRA efforts in the form of full-time funding for a NAGPRA liaison and an administration that supports NAGPRA implementation, so much so that History Colorado has agreed to absorb all indirect costs on NAGPRA grants to allow the funds to go completely towards reburial and repatriation travel for tribes. History Colorado hopes that one day those repatriation grant funds will once again allow for a ceremonial meal that has been universally requested by tribes, which is an important aspect of reburials. Ms. Ambler stated that History Colorado simply could not conduct the repatriation and reburial processes without these grant monies. Ms. Ambler commended the National NAGPRA Program for so quickly processing Notices of Inventory Completion, especially in lieu of the recent promulgations of 43 C.F.R. 10.11, and noted the efforts of Ms. Lavallee and Ms. O'Brien.

On behalf of History Colorado President Ed Nichols, Ms. Ambler echoed Vice-Chairman Hight's invitation to the

Review Committee to hold a Review Committee meeting in Denver, Colorado. History Colorado has a brand-new history center, with a beautiful meeting space suitable for the Review Committee. Colorado is the indigenous home of at least 48 federally recognized tribes. Denver has multiple accommodations, and the airport is a central hub that makes travel easy.

Ms. Worl thanked Ms. Ambler for her comments and for the kind invitation to meet in Denver.

Mr. Frank Wozniak

Mr. Frank Wozniak, National NAGPRA Coordinator for the USDA Forest Service, and NAGPRA Coordinator for the Southwestern Region, thanked the Review Committee for the opportunity to speak. Mr. Wozniak provided additional information for the Coconino National Forest repatriation to the Hopi Tribe. The Coconino National Forest repatriation is a regional priority and commitment for the Southwestern Region, as well as a national priority and commitment for the Forest Service as a whole. As a result significant funding has been dedicated for this repatriation. The total funding for Fiscal years 2010, 2011 and 2012 is 960,000 dollars for this repatriation. The final proposed funding request for Fiscal 2013 and the initial proposed funding request for Fiscal 2014 amount to an additional 640,000 dollars. The total repatriation costs will total 1.6 million dollars.

Based upon the estimates provided by the Museum of Northern Arizona and the Arizona State University, there will be somewhat fewer numbers of human remains that will be on the final listing of minimum number of individuals. Initially, the Notice of Inventory Completion listed approximately 2,900 individuals. Mr. Wozniak stated that the current estimate is approximately 2,100 individuals and 6,000 funerary objects. This is still a very significant number of individuals, and will be the largest repatriation that the Forest Service will do regarding existing collections, with an average cost per individual of 800 dollars.

Ms. Worl thanked Mr. Wozniak for his comments.

Mr. Antonio Chavarria

Mr. Antonio Chavarria, Curator of Ethnology at the Museum of Indian Arts and Culture, Laboratory of Anthropology, stated that on behalf of the staff of the museum and at the request of the museum facilitator, he would like to invite everyone to a meeting the following day at the museum. This is a regular meeting of the museum's Indian Advisory Panel, which will also have invited delegates from local tribal communities, tribal representatives, and officials to give an informational session on the museum.

Closing Comments

Ms. Worl thanked every one of the presenters who provided invaluable information, identified areas that need further attention, and shared success stories. Ms. Hutt encouraged people to continue to submit comments to the Review Committee, either by attending a meeting or in writing. Ms. Hutt thanked the meeting hosts, National NAGPRA Program staff, and fellow Review Committee members for their valuable work. Ms. Worl stated that each Review Committee member brings valuable expertise to the committee.

Traditional Closing

Mr. Mervin Wright, Jr., Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, offered a traditional closing.

Meeting Adjournment

The meeting was adjourned at 4:12 p.m., Thursday, May 10, 2012, by Ms. Worl.

Certified –.

signed _____
Ms. Sherry Hutt,
Manager, National NAGPRA Program
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

8/10/2012
Date _____

Approved on behalf of the Review Committee –

signed _____
Ms. Rosita Worl
Chair, Native American Graves Protection
and Repatriation Review Committee

8/14/2012
Date _____